

ATTACHMENT

Regulatory Background

In 2005, the EPA entered a voluntary consent agreement with the animal feeding operations (AFO) industry in which AFOs that chose to sign the Air Compliance Agreement (Agreement) shared responsibility for funding the National Air Emissions Monitoring Study (NAEMS). Approximately 2,600 AFOs, representing nearly 14,000 facilities that include broiler, dairy, egg layer and swine operations, received the EPA's approval to participate in the Agreement.

To provide a framework for the NAEMS, AFO industry experts, university and government scientists and other stakeholders collaborated to develop a comprehensive monitoring plan. The study was designed to generate scientifically credible data to characterize emissions from the participating animal sectors.

Consistent with the Agreement, the Agriculture Air Research Council (AARC), a nonprofit entity comprised of participating AFO industry representatives, administered the monitoring study. The AARC was responsible for selecting the Independent Monitoring Contractor (IMC) and the study's Science Advisor with EPA approval. The Agreement outlined the roles and responsibilities of the AARC, the IMC and the Science Advisor.

The monitoring plan specified the general geographic location of the farms to be monitored, animal production phase, ventilation type, manure management/handling system and other pertinent information for each animal sector.

- For broilers, two sites were to be monitored - one on the West Coast and the other in the Southeast. Both were to be mechanically ventilated and have litter on the floor.
- For the swine industry, the sites were to be located in the Southeast (sow and finisher), Midwest (sow and finisher), and West (sow). Mechanically-ventilated buildings, a deep pit building, lagoons and basin manure storage types were to be monitored.
- For dairy, both naturally- and mechanically-ventilated buildings, lagoons and basins were monitored. Five dairies were monitored, one dairy in each of the following geographical areas: Northeast, Midwest, Northwest, West and South.

For confinement sources, the IMC monitored for ammonia (NH₃), particulate matter (PM₁₀, PM_{2.5}, TSP), volatile organic compounds (VOCs) and hydrogen sulfide (H₂S). For lagoons and basins, H₂S, NH₃ and VOC were to be monitored. Accordingly, the EPA is then responsible for developing EEMs for each of these pollutants.

Charge to the Science Advisory Board (SAB) AFO Air Emissions Review Panel

In preparation for the first and second meeting, the EPA has analyzed the NAEMS data for two broiler sites and nine swine and dairy lagoons/basins. For the purpose of this study, the EPA used the description of a lagoon and basin as provided in the MidWest Plan Service "Manure Storages" (MWPS-18 Section 2) document. According to MWPS, "A lagoon is a biological treatment system designed and operated for biodegradation of organic matter in animal manure to a more stable end product. A basin, while similar to but smaller than a lagoon, is designed to store manure only and is not a treatment system."

For a broiler confinement house, the EPA has developed draft EEMs for NH₃, PM₁₀, PM_{2.5}, TSP, VOC and H₂S. For swine and dairy lagoons/basins, the EPA has only developed a draft EEM for NH₃. The documents provided to the SAB describe the sites monitored; the data submitted to the EPA; and a detailed discussion of the statistical methodology used to develop the draft EEMs. This material is provided to inform the SAB panel of the EEM development process used by the agency. In subsequent meetings, the EPA will address draft EEMs for egg-layers, swine and dairy confinement houses and other pollutants for swine and dairy lagoons/basins.

Issue 1: Statistical Methodology used to develop draft EEMs

The EPA seeks the SAB's input on the statistical methodology used by the EPA to develop the draft EEMs. Section 7.0 and 8.0 of the broiler document and Section 5.0 of the swine and dairy lagoon/basin document provide an overview of the statistical methodology used to develop the draft EEMs. A flow diagram of the statistical methodology is provided in Figure 7-1 in the broiler document and Figure 5-1 in the swine and dairy lagoon/basin document. The EPA considers this statistical methodology to be the best approach for analyzing the data and intends to use this same approach to develop draft EEMs for the egg-layers, swine and dairy confinement houses.

Using the process described in the sections listed above, we developed a mean trend function that provides a point prediction of emissions under a given set of conditions. We chose an appropriate mean trend function to quantify the relationship between predictor variables and pollutant emissions by analyzing the emissions data and incorporating knowledge of the emissions generating processes. The EEM development process also involves choosing a probability distribution and covariance function to appropriately quantify other contributions to variability in emissions, and thereby to accurately quantify methods at all stages. If necessary, we will adjust the statistical methodology based on our review of the SAB's input.

Question 1: Please comment on the statistical approach used by the EPA for developing the draft EEMs for broiler confinement houses and swine and dairy lagoons/basins. In addition, please comment on using this approach for developing draft EEMs for egg-layers, swine and dairy confinement houses.

Issue 2: Statistical Methodology used to develop swine and dairy lagoon/basin draft EEMs

After conducting an initial analysis of the NAEMS data submitted for swine and dairy lagoons/basins, the EPA decided to focus on developing a draft EEM for NH₃. The EPA's review of current literature indicates that lagoon/basin emissions are influenced by several factors, one of these being lagoon/basin temperature. To ensure that the dataset used to develop the draft EEM represented all seasonal meteorological conditions for the entire two year monitoring period, the EPA decided to combine the swine and dairy data. Combining the swine and dairy lagoon/basin dataset also resulted in combining lagoon and basin emissions data.

To maximize the number of NH₃ emissions measurements used to develop the draft EEM, the EPA used static predictor variables (SPVs) as surrogates for data on lagoon/basin conditions (i.e., nitrogen content of lagoon liquid, lagoon pH, oxidation reduction potential and temperature). The static variables of animal type, total live mass of animal capacity on the farm and the surface area of the lagoon were used to represent NH₃ precursor loading and the potential for release to the air. Consistent with operating parameters associated with statistical degrees-of-freedom, we concluded that two degrees of freedom was the maximum that the data would credibly allow for inclusion in the developing the draft EEM. As a result, the EPA developed three sets of draft EEMs, using the paired combinations of these static variables (i.e., animal type, surface area, farm size) and the continuous variables representing

meteorological conditions (i.e., temperature, atmospheric pressure, humidity, wind speed, solar radiation).

Question 2: Please comment on the agency's decision to combine the swine and dairy dataset to ensure that all seasonal meteorological conditions are represented. In addition, the agency also seeks the SAB's comments on whether the agency should combine lagoon and basin data.

Question 3: Please comment on the agency's decision to use SPVs as surrogates for data on lagoon/basin conditions. Given the uncertainties in that approach, does the SAB recommend that the EPA consider specific alternative approaches for statistically analyzing the data that would allow for the site-specific lagoon liquid characteristics to be used as predictor variables?

Question 4: Does the SAB recommend that EPA consider alternative approaches for developing the draft NH₃ EEM that balances the competing needs for a large dataset (to reflect seasonal meteorological conditions) versus incorporating additional site-specific factors that directly affect lagoon emissions. If so, what specific alternative approaches would be appropriate to consider?

Issue 3: Negative and Zero Data

Some emissions measurements were reported to the EPA as either negative or zero emissions values. When developing the draft EEMs, the EPA used the following general approach regarding inclusion of negative and zero emissions values in the data.

- The EPA evaluated whether the negative or zero values represent the variability in emissions measurements due to the means of obtaining the measurements. For example, negative values for a pollutant concentration might result when the concentration of the pollutant falls below the minimum detection limit of a monitor. For all EEM datasets, the EPA included zero values because these values potentially represent instances where the emissions from the source were zero (e.g., a frozen lagoon), or the background and pollutant concentrations from the source were the same. Regarding negative values, in cases where the dataset available to develop draft EEMs was relatively large and the emissions were significantly greater than zero, the EPA excluded negative emissions values from the EEM datasets. The EPA used this approach to develop the entire broiler confinement house draft EEMs and swine and dairy lagoon/basin NH₃ draft EEMs.
- The EPA reviewed the data to see if the data quality measures were properly performed according to the Quality Assurance Project Plan.
- If the EPA identified data where the quality assurance measures were not followed, we contacted the science advisor to determine if the corrected data could be submitted to the EPA.

The EPA has conducted a preliminary analysis of the swine and dairy lagoon/basin H₂S emissions data. Our analysis indicates that we may need to modify our approach for handling negative and zero data in order to develop a draft H₂S EEM for swine and dairy lagoons/basins. A modification may be needed due to the limited number of H₂S emissions values, the presence of a greater percentage of negative emissions values and emissions values that are closer to zero than the NH₃ emissions for swine and dairy lagoons/basins. The EPA's concern is that failure to include the negative measurements in the dataset, or setting them equal to zero, would result in an EEM that fails to fully quantify uncertainty around the point prediction of emissions attributable to measurement error.

Question 5: Please comment on the EPA's approach for handling negative or zero emission measurements.

Question 6: In the interest of maximizing the number of available data values for development of the draft H₂S EEMs for swine and dairy lagoons/basins, does SAB recommend any alternative approaches for handling negative and zero data other than the approach used by the agency.

Issue 4: Volatile Organic Compounds (VOC) Data

The EPA reviewed the VOC data submitted for the California and Kentucky broiler sites. The two sites used different VOC measurement techniques. Based on our analysis of the measurement and analytical techniques and the VOC data, the EPA decided to use only the VOC data from the Kentucky sites when developing the draft VOC EEM.

Question 7: Please comment on the approach EPA used to develop the draft broiler VOC EEM.

APPENDIX I. EXAMPLES OF *FEDERAL REGISTER* NOTICES REQUESTING PUBLIC COMMENT

***Federal Register* Notice: Announcement of Public Comment Period for Draft Document**

Federal Register, Volume 77 Issue 102 (Friday, May 25, 2012)

[Federal Register Volume 77, Number 102 (Friday, May 25, 2012)]

[Notices]

[Pages 31353-31355]

From the Federal Register Online via the Government Printing Office [<http://www.gpo.gov/>]

[FR Doc No: 2012-12808]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9678-3; Docket ID No. EPA-HQ-ORD-2012-0276]

An Assessment of Potential Mining Impacts on Salmon Ecosystems of
Bristol Bay, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” (EPA-910-R-12-004a-d). The document was prepared by the EPA’s Region 10 (Pacific Northwest and Alaska), EPA’s Office of Water, and EPA’s Office of Research and Development. The EPA conducted this assessment to determine the significance of Bristol Bay’s ecological resources and evaluate the potential impacts of large-scale mining on these resources. EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making; EPA will not address use of its regulatory authority until the assessment becomes final and has made no judgment about whether and how to use that authority at this time.

DATES: The public comment period began Friday, May 18, 2012, and ends Monday, July 23, 2012. Technical comments should be in writing and must be received by EPA by Monday, July 23, 2012.

ADDRESSES: The draft “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” is available primarily via the Internet on the EPA Region 10 Bristol Bay Web site at www.epa.gov/bristolbay as well as on the National Center for Environmental Assessment’s Web site under the Recent Additions and the Data and Publications menus at www.epa.gov/ncea. A printed copy of the assessment will be placed at public locations in Bristol Bay and in Anchorage, AK. These locations are listed on the Region 10 Web site. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.” Please also indicate if a paper copy of the full set of appendices is needed.

Comments on the report may be submitted electronically via <http://www.regulations.gov/>, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-1753; or email: ORD.Docket@epa.gov.

For technical information concerning the report, contact Judy Smith; telephone: 503-326-6994; facsimile: 503-326-3399; or email: r10bristolbay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The U.S. Environmental Protection Agency (EPA) conducted this assessment to determine the significance of Bristol Bay’s ecological resources and evaluate the potential impacts of large-scale mining on these resources. The EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making. The Web site that describes the project is www.epa.gov/bristolbay. This draft document addresses potential impacts to water quality and the salmon fishery that may result from large-scale mining in the Nushagak and Kvichak watersheds of southwest Alaska.

EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA’s information quality guidelines, and it does not represent and should not be construed to represent Agency policy or

views. EPA utilizes public comments as one means to ensure that science products are complete and accurate. EPA is seeking comments from the public on all aspects of the report, including the scientific and technical information presented in the report, the hypothetical mining scenario used, the data and information used to inform assumptions about mining activities and the evaluations of risk to the fishery, and the potential mitigation measures considered (and effectiveness of those measures). EPA is also specifically seeking any additional data or scientific or technical information about Bristol Bay resources or large-scale mining that should be considered in our evaluation.

EPA will consider any public comments submitted in accordance with this notice when revising the document. After public review and comment, EPA's independent contractor, Versar, Inc., will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The preferred method to submit comments is through the docket, which is described below. Public meetings will be held in Anchorage, Dillingham, Newhalen, Naknek, Nondalton, and New Stuyahok, AK during the week of June 4-8, 2012. Spoken comments will be accepted at these meetings. The external peer review panel meeting is scheduled to be held in Anchorage, AK on August 7, 8, and 9, 2012. The public will be invited to attend on August 7 and 8, 2012. Further information regarding the external peer review panel meeting will be announced at a later date in the Federal Register.

II. How To Submit Technical Comments to the Docket at

<http://www.regulations.gov/>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2012-0276, by one of the following methods:

<http://www.regulations.gov/>: Follow the on-line instructions for submitting comments.

Email: ORD.Docket@epa.gov. Include the docket number EPA-HQ-ORD-2012-0276 in the subject line of the message.

Fax: 202-566-1753.

Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), Docket EPA-HQ-ORD-2012-0276, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202-566-1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Comment at a public meeting: Spoken comments will be taken at public meetings during June 4-8, 2012. A court reporter will provide a transcription of comments received at the Anchorage and Dillingham meetings for the docket. Audio recording and written notes will be taken for the docket for comments spoken at Naknek, Newhalen, New Stuyahok, and Nondalton.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2012-0276. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available on-line at <http://www.regulations.gov/>, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov/> or email. The <http://www.regulations.gov/> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: Documents in the docket are listed in the <http://www.regulations.gov/--index>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically at <http://www.regulations.gov/> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 21, 2012.

Darrell Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012-12808 Filed 5-24-12; 8:45 am]

BILLING CODE 6560-50-P

***Federal Register* Notice: Announcement of Peer Review Panel Members and Public Comment Period for Draft Charge Questions**

Federal Register, Volume 77 Issue 108 (Tuesday, June 5, 2012)

[Federal Register Volume 77, Number 108 (Tuesday, June 5, 2012)]

[Notices]

[Pages 33213-33215]

From the Federal Register Online via the Government Printing Office [<http://www.gpo.gov/>]

[FR Doc No: 2012-13431]

=====

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9681-3; EPA-HQ-ORD-2012-0358]

An Assessment of Potential Mining Impacts on Salmon Ecosystems of
Bristol Bay, Alaska--Peer Review Panel Members and Charge Questions

AGENCY: Environmental Protection Agency (EPA).

[[Page 33214]]

ACTION: Notice of availability and public comment period.

SUMMARY: EPA is announcing the peer review panel members assembled by an independent contractor to evaluate the draft document titled, "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska" (EPA-910-R-12-004a-c). EPA is also announcing a three week public comment period for the draft charge questions to be provided to the peer review panel. The assessment was prepared by the U.S. EPA's Region 10 Office (Pacific Northwest and Alaska), EPA's Office of Water, and EPA's Office of Research and Development. The U.S. EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources.

DATES: The public comment period begins June 5, 2012, and ends June 26, 2012. Comments should be in writing and must be received by EPA by June 26, 2012.

Availability: Draft charge questions are provided below. Copies of the draft charge questions are also available via the Internet on the EPA Region 10 Bristol Bay Web site at www.epa.gov/bristolbay. The draft document “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” is also available on the Internet on the EPA Region 10 Bristol Bay Web site at www.epa.gov/bristolbay. A limited number of paper copies of the draft charge questions are available from the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, your mailing address, and title, “Peer Review Charge Questions on An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.”

Comments on the draft charge questions may be submitted electronically via <http://www.regulations.gov/>, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-9744; or email: ORD.Docket@epa.gov.

For technical information concerning the report, contact Judy Smith; telephone: 503-326-6994; facsimile: 503-326-3399; or email: r10bristolbay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Project

The U.S. EPA conducted this assessment to determine the significance of Bristol Bay’s ecological resources and evaluate the potential impacts of large-scale mining on these resources. The U.S. EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making. The Web site that describes the project is www.epa.gov/bristolbay.

EPA released the draft assessment for the purposes of public comment and peer review on May 18, 2012. Consistent with guidelines for the peer review of highly influential scientific assessments, EPA asked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft report. Versar evaluated the 86 candidates nominated during a previous public comment period (February 24, 2012 to March 16, 2012) and sought other experts to complete this peer review panel. The twelve peer review panel members are as follows:

Mr. David Atkins, Watershed Environmental, LLC.--Expertise in mining and hydrology.
Mr. Steve Buckley, WHPacific/NANA Alaska--Expertise in mining and seismology.
Dr. Courtney Carothers--Expertise in indigenous Alaskan cultures.
Dr. Dennis Dauble, Washington State University--Expertise in fisheries biology and wildlife ecology.
Dr. Gordon Reeves, USDA Pacific NW Research Station--Expertise in fisheries biology and aquatic biology.
Dr. Charles Slaughter, University of Idaho--Expertise in hydrology.
Dr. John Stednick, Colorado State University--Expertise in hydrology and biogeochemistry.
Dr. Roy Stein, Ohio State University--Expertise in fisheries and aquatic biology.
Dr. William Stubblefield, Oregon State University--Expertise in aquatic biology and ecotoxicology.
Dr. Dirk van Zyl, University of British Columbia--Expertise in mining and biogeochemistry.
Dr. Phyllis Weber Scannel--Expertise in aquatic ecology and ecotoxicology.
Dr. Paul Whitney--Expertise in wildlife ecology and ecotoxicology.

The peer review panel will be provided with draft charge questions to guide their evaluation of the draft assessment. These draft charge questions are designed to focus reviewers on specific aspects of the report. EPA is seeking comments from the public on the draft charge questions and welcome input on additional charge questions consistent with the objectives of the assessment. The draft charge questions are as follows:

(1) The assessment brought together information to characterize the ecological, geological, and cultural resources of the Nushagak and Kvichak watersheds. Was this characterization accurate? Was any significant literature missed that would be useful to complete this characterization?

(2) A formal mine plan or application is not available for the porphyry copper deposits in the Bristol Bay watershed. EPA developed a hypothetical mine scenario for its risk assessment. Given the type and location of copper deposits in the watershed, was this hypothetical mine scenario realistic? Has EPA appropriately bounded the magnitude of potential mine activities with the minimum and maximum mine sizes used in the scenario? Is there significant literature not referenced that would be useful to refine the mine scenario?

(3) EPA assumed two potential modes for mining operations: A no-failure mode of operation and a mode outlining one or more types of failures. The no-failure operation mode assumes best practical engineering and mitigation practices are in place and in optimal operating condition. Is the no-failure mode of operation adequately described? Is the choice of engineering and mitigation practices reasonable and consistent with current practices?

(4) Are the potential risks to salmonid fish due to habitat loss and modification and water quantity/quality changes appropriately characterized and described for the no-failure mode of operation? Does the assessment appropriately describe the risks to salmonid fish due to

operation of a transportation corridor under the no-failure mode of operation?

(5) Do the failures outlined in the assessment reasonably represent potential system failures that could occur at a mine of the type and size outlined in the mine scenario? Is there a significant type of failure that is not described? Are the assumed risks of failures appropriate?

(6) Does the assessment appropriately characterize risks to salmonid fish due to a potential failure of water and leachate collection and treatment from the mine site? If not, what suggestions do you have for improving this part of the assessment?

(7) Does the assessment appropriately characterize risks to salmonid fish due to culvert failures along the transportation corridor? If not, what suggestions do you have for improving this part of the assessment?

(8) Does the assessment appropriately characterize risks to salmonid fish due to pipeline failures? If not, what suggestions do you have for improving this part of the assessment?

(9) Does the assessment appropriately characterize risks to salmonid fish due to a potential tailings dam failure? If not, what suggestions do you have for improving this part of the assessment?

(10) Does the assessment appropriately characterize risks to wildlife and human cultures due to risks to fish? If not, what suggestions do you have for improving this part of the assessment?

(11) Does the assessment appropriately describe the potential for cumulative risk from multiple mines?

(12) Does the assessment identify the uncertainties and limitations associated with the mine scenario and the identified risks?

The preferred method to submit comments on the draft peer review charge is through the docket, which is described below. This docket is separate from the docket collecting public comments on the draft assessment itself. The EPA will evaluate comments received on these draft charge questions. Charge questions will be finalized and provided to EPA's independent contractor, Versar, Inc., who will convene the expert panel for independent external peer review.

The external peer review panel meeting is scheduled to be held in Anchorage, AK on August 7, 8, and 9, 2012. The public will be invited to attend on August 7 and 8, 2012. Further information regarding the external peer review panel meeting will be announced at a later date in the Federal Register.

II. How to Submit Technical Comments to the Docket at <http://www.regulations.gov/>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2012-0358, by one of the following methods:

<http://www.regulations.gov/>: Follow the on-line instructions for

submitting comments.

Email: ORDDocket@epa.gov. Include the docket number EPA-HQ-ORD-2012-0358 in the subject line of the message.

Fax: 202-566-9744.

Mail: Office of Environmental Information (OEI) Docket (Mail Code: 28221T), Docket EPA-HQ-ORD-2012-0358, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202-566-1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2012-0358. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov/>, including any personal information provided, unless a comment includes information claimed to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov/> or email. The <http://www.regulations.gov/> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for

clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: Documents in the docket are listed in the <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 30, 2012.
Darrel A. Winner,
Acting Director, National Center for Environmental Assessment.
[FR Doc. 2012-13431 Filed 6-4-12; 8:45 am]
BILLING CODE 6560-50-P

Federal Register Notice: Peer Review Meeting Announcement and Invitation to Public to Attend and Offer Testimony

Federal Register, Volume 77 Issue 130 (Friday, July 6, 2012)

[Federal Register Volume 77, Number 130 (Friday, July 6, 2012)]

[Notices]

[Pages 40037-40039]

From the Federal Register Online via the Government Printing Office [<http://www.gpo.gov/>]

[FR Doc No: 2012-16441]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9697-3]

Notice of the Peer Review Meeting for EPA's Draft Report Entitled
An Assessment of Potential Mining Impacts on Salmon Ecosystems of
Bristol Bay, AK

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of external peer review meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external peer review, has convened a panel of experts and will organize and conduct an independent expert external peer review meeting on August 7-9, 2012, to review the draft report entitled An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska. Versar, Inc. invites the public to register to attend the first two days of this meeting as observers. In addition, Versar, Inc. invites the public to register to provide oral testimony during Day 1 (August 7, 2012) of the external peer review meeting. The panel will meet privately on Day 3 (August 9, 2012) of the meeting. The expert panel is charged with reviewing the scientific and technical merit of the draft assessment. The panel will not be making recommendations to the EPA concerning any potential future actions or policies. Therefore, the peer review meeting will focus on issues of science relevant to the assessment, rather than its policy implications. The panel will have access to public comments received in

the official public docket (docket ID number EPA-HQ-ORD-2012-0276) during the assessment's public comment period, as well as oral comments made on Day 1 of the peer review meeting. The draft assessment is available through <http://www.regulations.gov/> and at www.epa.gov/bristolbay. In preparing the final assessment, EPA will consider Versar, Inc.'s report of the comments and recommendations from the external peer review meeting, as well as written public comments received through the official public docket. The final peer review report prepared by Versar, Inc. will be made available to the public. EPA has released this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

DATES: The public peer review panel meeting will be held on August 7-8, 2012, beginning and ending at approximately 8:30 a.m. and 5:00 p.m. (AKDT) on both days.

ADDRESSES: The independent expert external peer review meeting will be held at the Dena'ina Civic & Convention Center, located at 600 West Seventh Avenue, Anchorage, Alaska.

Meeting Background: As part of the peer review process for the EPA's draft assessment report, the public portion of the peer review meeting will be held on August 7-8, 2012 at the Dena'ina Civic & Convention Center in Anchorage, Alaska. On both days, the meeting will begin at 8:30 a.m. (AKDT) and will end at approximately 5:00 p.m. (AKDT). Members of the public and any other interested parties may register to attend both days of the meeting as observers, and to offer oral testimony on the first day of the meeting.

The focus of this peer review meeting is the scientific content and merit of the EPA's draft assessment. Public speakers are encouraged to focus on issues directly relevant to science-based aspects of the assessment, and to address specific scientific points in their oral testimony. The peer review process is separate from the EPA public comment meetings held in early June that enabled members of the public to provide comments and voice opinions concerning the EPA's draft assessment report and its potential policy implications for the public docket.

Day 1 of the meeting (August 7, 2012) will be dedicated to hearing oral comments on the draft assessment. Members of the public who have registered in advance to provide oral comments will have the opportunity to speak during the observer comment session. Each speaker will be allowed between 3-5 minutes, depending on number of speakers registered. Given time constraints, a maximum of 100 speakers will be allowed to offer testimony. If more than 100 speakers register to provide oral comments, speakers will be selected by Versar in a manner designed to optimize representation from all organizations,

affiliations, and present a balance of science issues relevant to the Agency's science assessment. Additional information on selection of speakers and speaking times will be sent out by August 3, to all individuals who register to speak.

To accommodate as many speakers as possible, registered speakers will present oral comments only, without visual aids or written material. All members of the public, including registered observers and speakers, are encouraged to submit written comments and materials to the official public docket for the draft assessment (docket ID number EPA-HQ-ORD- 2012-0276) by the close of the public comment period on July 23, 2012. Panel members will have access to any written comments and materials submitted to the official public docket by this deadline. Registered observers and speakers will not be allowed to distribute any written materials directly to the peer review panel. To submit written comments, please follow one of the methods outlined in the previous Federal Register notice, issued on May 25, 2012, initiating the assessment's public comment period: Federal Register Volume 77, Number 102 (<http://www.gpo.gov/fdsys/pkg/FR-2012-05-25/html/2012-12808.htm>).

Day 2 of the meeting (August 8, 2012) will be devoted to deliberations of the EPA's draft assessment by the peer review panel, guided by the charge questions provided to the public for public comment. Registered observers may attend and observe the peer review panel deliberations on Day 2, but will not be allowed to address the panel or provide oral or written comments.

Registration: To attend the August 7-8 public portion of the peer review meeting, you must register for the meeting by 11:59 p.m. (EDT) on July 23, 2012. You can register for the meeting by visiting , completing the online registration form, and submitting the required information. You can also register through U.S. Postal Service or overnight/priority mail by sending the necessary registration information (see Required Registration Information) to the Versar Meeting Coordinator, Ms. Brittany Ekstrom, Versar, Inc., 6850 Versar Center, Springfield, VA 22151; Telephone: (703) 642-6767. Registrations sent via U.S. Postal Service or overnight/priority mail must be received by 11:59 p.m. (EDT) on July 23, 2012. There will be no on-site registration, so members of the public who do not register by July 23, 2012 via one of the methods detailed above will not be able to attend the peer review meeting.

Required Registration Information: To register for the meeting online or via post, you must provide your full name, organization or affiliation, and contact information. You must also indicate which days you plan to attend the meeting and if you are interested in making an oral statement during the public comment session on Day 1 of the meeting. If you register to speak, you must also indicate if you have any special requirements related to your oral comments (e.g., translation).

If you indicate that you wish to make oral comments, you will be

asked to select one category most closely reflecting the content of your comments. These comment categories are: (i) Mine scenario and operational modes; (ii) potential failures and probabilities; (iii) hydrology; (iv) toxicity; (v) potential effects on Alaska Native culture; (vi) potential effects on fish; (vii) potential effects on wildlife; and (viii) other issues. Should more than 100 speakers register, these categories will be used to ensure that a balance of substantive science issues relevant to the assessment are heard.

FOR FURTHER INFORMATION CONTACT: Questions regarding logistics or registration for the external peer review meeting should be directed to Ms. Brittany Ekstrom, Versar, Inc., 6850 Versar Center, Springfield, VA, 22151; telephone: (703) 642-6767; or via email at BEkstrom@versar.com.

SUPPLEMENTARY INFORMATION:

I. Information About the Project

The EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources. The EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a sound scientific and technical foundation for future decision making. The Web site that describes the project is www.epa.gov/bristolbay.

II. Information About the Peer Review Panel

The EPA released the draft assessment for the purposes of public comment and peer review on May 18, 2012. Consistent with guidelines for the peer review of highly influential scientific assessments, EPA asked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft report. Versar, Inc. evaluated the 68 candidates nominated during a previous public comment period (February 24, 2012 to March 16, 2012) and sought other experts to complete this peer review panel. The twelve peer review panel members were made public in EPA's previous FRN, issued on June 5, 2012. The panelist's names are included below, with corrections made to account for errors present in the June 5, 2012 FRN:

Mr. David Atkins, Watershed Environmental, LLC.--Expertise in mining and hydrology.

Mr. Steve Buckley, WHPacific--Expertise in mining and seismology.

Dr. Courtney Carothers, University of Alaska Fairbanks--Expertise in indigenous Alaskan cultures.

Dr. Dennis Dauble, Washington State University--Expertise in fisheries

biology and wildlife ecology.

Dr. Gordon Reeves, USDA Pacific NW Research Station--Expertise in fisheries biology and aquatic biology.

Dr. Charles Slaughter, University of Idaho--Expertise in hydrology.

Dr. John Stednick, Colorado State University--Expertise in hydrology and biogeochemistry.

Dr. Roy Stein, Ohio State University--Expertise in fisheries and aquatic biology.

Dr. William Stubblefield, Oregon State University--Expertise in aquatic biology and ecotoxicology.

Dr. Dirk van Zyl, University of British Columbia--Expertise in mining.

Dr. Phyllis Weber Scannell--Expertise in aquatic ecology and ecotoxicology.

Dr. Paul Whitney--Expertise in wildlife ecology and ecotoxicology.

Dated: June 29, 2012.

Darrell Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012-16441 Filed 7-5-12; 8:45 am]

BILLING CODE 6560-50-P

APPENDIX J. CONFLICT OF INTEREST MEMORANDA FOR ISI

Conflict of Interest Memorandum: Task Orders

U.S. Environmental Protection Agency Conflict of Interest Statement for Task Orders

The contractor shall include a conflict of interest certification in all task orders in accordance with EPAAR 1552.209-71 and the Section B Clause “Ordering Procedures.”

Prior to selecting expert panelists/peer reviewers, the contractor shall perform an evaluation to determine the existence of an actual or potential COI for each potential reviewer. The financial and professional information obtained by the Contractor as part of the evaluation to determine the existence of an actual or potential conflict of interest is considered private and nondisclosable to outside entities except as required by law and/or regulation.

The contractor shall ensure that potential peer reviewers will not have an actual or potential conflict of interest if they are selected to participate in a peer review. When determining if a proposed peer reviewer may have an actual or potential conflict of interest, the contractor shall incorporate the following yes/no questions (a – i) for **all** individuals, and requests for supporting information (j – r) for **task orders involving public peer review meetings** into its established process to evaluate and determine the presence of an actual or potential COI:

Conflict of Interest Analysis		YES	NO
a.	To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse’s compensated or uncompensated employment, including government service, during the past 24 months?		
b.	To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse’s research support and project funding, including from any government source, during the past 24 months?		
c.	To the best of your knowledge and belief, is there any connection between the subject topic and any consulting by you and/or your spouse, during the past 24 months?		
d.	To the best of your knowledge and belief, is there any connection between the subject topic and any expert witness activity by you and/or your spouse, during the past 24 months?		
e.	To the best of your knowledge and belief, have you, your spouse, or dependent child, held in the past 24 months, any financial holdings (excluding well-diversified mutual funds and holdings, with a value less than \$15,000) with any connection to the subject topic?		
f.	Have you made any public statements or taken positions on or closely related to the subject topic under review?		
g.	Have you had previous involvement with the development of the document (or review materials) you have been asked to review?		
h.	To the best of your knowledge and belief, is there any other information that might reasonably raise a question about an actual or potential personal conflict of interest or bias?		

Conflict of Interest Analysis		
	YES	NO
i. To the best of your knowledge and belief, is there any financial benefit that might be gained by you or your spouse as a result of the outcome of this review?		

Information to be collected from panel members:

j. <u>Compensated and noncompensated employment</u> —for panel member and spouse—sources of compensated and uncompensated employment, including government service, for the preceding 2 years, including a brief description of work.
k. <u>Research funding</u> —for panel member—sources of research support and project funding, including from any government source, for the preceding 2 years for which the panel member served as the Principal Investigator, Significant Collaborator, or Project Manager or Director. For panel member's spouse, a general description of research and project activities in the preceding 2 years.
l. <u>Consulting</u> —for panel member—compensated consulting activities during the preceding 2 years, including names of clients if compensation provided 15% or more of annual compensation. For panel member's spouse, a general description of consulting activities for the preceding 2 years.
m. <u>Expert witness activities</u> —for panel member—sources of compensated expert witness activities and a brief description of issue and testimony. For panel member's spouse, a general description of expert testimony provided in the preceding 2 years.
n. <u>Assets: Stocks, Bonds, Real Estate, Business, Patents, Trademarks and Royalties</u> —for panel member, spouse and dependent children—specific financial holdings that collectively had a fair market value greater than \$15,000 at any time during the preceding 24-month period (excluding well-diversified mutual funds, money market funds, treasury bonds and personal residence).
o. <u>Liabilities</u> —for panel member, spouse and dependent children—liabilities over \$10,000 owed at any time in the preceding 12 months (excluding a mortgage on personal residence, home equity loans, automobile and consumer loans).
p. <u>Public statements</u> —a brief description of public statements and/or positions on, or closely related to, the matter under review by the panel member.
q. <u>Involvement with document under review</u> —a brief description of any previous involvement of the panel member with the development of the document (or review materials) the individual has been asked to review.
r. <u>Other potentially relevant information</u> —a brief description of any other information that might reasonably raise a question about actual or potential personal conflict of interest or bias.

Further, the contractor shall require that panel members sign a statement that says the panel member is not currently arranging new professional relationships with, or obtaining new financial holdings in, an entity, which is not yet reported and which could be viewed as related to the topic under discussion or stakeholders associated with the topic.

Conflict of Interest Memorandum: Certification

**U.S. Environmental Protection Agency
Conflict of Interest Inquiry**

You have been requested by EPA to serve as a Peer Reviewer for _____, and your involvement in certain activities could pose a conflict of interest or create the appearance of a loss of impartiality in your review. Although your involvement in these activities is not necessarily grounds for exclusion from the peer review, affiliations or activities that could potentially lead to conflicts of interest are included in the table.

Please complete the table and sign the certification below. If you have any questions, contact [point of contact at EPA Office] at your earliest convenience to discuss any potential conflict of interest issues.

Conflict of Interest Analysis		
	YES	NO
a. To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse's compensated or uncompensated employment, including government service, during the past 24 months?		
b. To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse's research support and project funding, including from any government source, during the past 24 months?		
c. To the best of your knowledge and belief, is there any connection between the subject topic and any consulting by you and/or your spouse, during the past 24 months?		
d. To the best of your knowledge and belief, is there any connection between the subject topic and any expert witness activity by you and/or your spouse, during the past 24 months?		
e. To the best of your knowledge and belief, have you, your spouse, or dependent child, held in the past 24 months, any financial holdings (excluding well-diversified mutual funds and holdings, with a value less than \$15,000) with any connection to the subject topic?		
f. Have you made any public statements or taken positions on or closely related to the subject topic under review?		
g. Have you had previous involvement with the development of the document (or review materials) you have been asked to review?		
h. To the best of your knowledge and belief, is there any other information that might reasonably raise a question about an actual or potential personal conflict of interest or bias?		
i. To the best of your knowledge and belief, is there any financial benefit that might be gained by you or your spouse as a result of the outcome of this review?		

CERTIFICATION

I hereby certify that I have read the above statements and, to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to provide an impartial, technically sound, objective review of the subject matter or otherwise result in a biased opinion.

(Name – please print)

(Signature)

(Date)



What Did You Think?

We strive to constantly provide the highest level of value for you. Please take a few minutes to tell us about your experience using this product.

To be taken to a short consumer satisfaction survey, please [click here](https://www.surveymonkey.com/r/OSAconsumerfdbck?product=Science+and+Technology+Policy+Council+Peer+Review+Handbook+4th+Edition+October+2015) or copy and paste the following URL into your browser:

[https://www.surveymonkey.com/r/OSAconsumerfdbck?
product=Science and Technology Policy Council Peer Review Handbook 4th Edition
October 2015](https://www.surveymonkey.com/r/OSAconsumerfdbck?product=Science+and+Technology+Policy+Council+Peer+Review+Handbook+4th+Edition+October+2015)

Thank you for your feedback.

Sincerely,

Office of the Science Advisor
United States Environmental Protection Agency
www.epa.gov/OSA@epa.gov

DOW JONES, A NEWS CORP COMPANY ▼

DJIA 23933.51 0.04% ▲

Nasdaq 7091.00 -0.14% ▼

U.S. 10 Yr 6/32 Yield 2.047% ▲

Crude Oil 68.50

THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.

<https://www.wsj.com/articles/a-step-toward-scientific-integrity-at-the-epa-1500326062>

OPINION | COMMENTARY

A Step Toward Scientific Integrity at the EPA

Scott Pruitt sweeps out Obama-era science advisers. The agency needs truly independent ones.

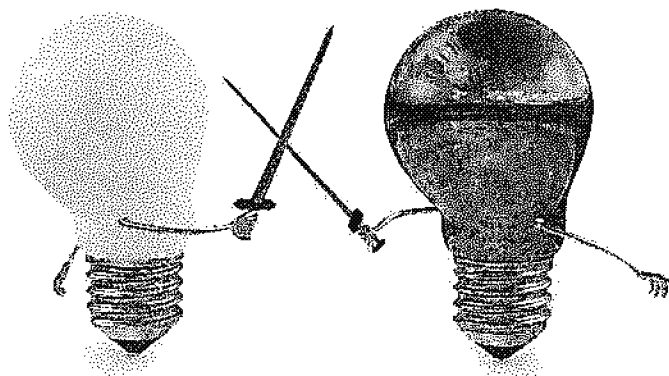


PHOTO: GETTY IMAGES/ISTOCKPHOTO

By Steve Milloy

July 17, 2017 5:14 p.m. ET

The Trump administration in May began the process of replacing the small army of outside science advisers at the Environmental Protection Agency. In June, 38 additional EPA advisers were notified that their appointments would not be renewed in August. To Mr. Trump's critics, this is another manifestation of his administration's "war on science." Histronics aside, the administration's actions are long overdue.

00575

<https://www.wsj.com/articles/a-step-toward-scientific-integrity-at-the-epa-1500326062>

5/3/2018

ED_002389_00011925-00575

The most prominent of the EPA's myriad boards of outside advisers are the Science Advisory Board and the Clean Air Scientific Advisory Committee, or CASAC. Mostly made up of university professors, these boards also frequently draw members from consulting firms and activist groups. Only rarely do members have backgrounds in industry. All EPA boards are governed by the Federal Advisory Committee Act, which requires that they be balanced and unbiased. While the EPA is required by law to convene the SAB and CASAC, the agency is not bound by law to heed their advice.

The EPA's Obama-era "war on coal" rules and its standards for ground-level ozone—possibly the most expensive EPA rule ever issued—depend on the same scientifically unsupported notion that the fine particles of soot emitted by smokestacks and tailpipes are lethal. The EPA claims that such particles kill hundreds of thousands of Americans annually.

The EPA first considered regulating fine particles in the mid-1990s. But when the agency ran its claims past CASAC in 1996, the board concluded that the scientific evidence did not support the agency's regulatory conclusion. Ignoring the panel's advice, the EPA's leadership chose to regulate fine particles anyway, and resolved to figure out a way to avoid future troublesome opposition from CASAC.

In 1996 two-thirds of the CASAC panel had no financial connection to the EPA. By the mid-2000s, the agency had entirely flipped the composition of the advisory board so two-thirds of its members were agency grantees. Lo and behold, CASAC suddenly agreed with the EPA's leadership that fine particulates in outdoor air kill. During the Obama years, the EPA packed the CASAC panel. Twenty-four of its 26 members are now agency grantees, with some listed as principal investigators on EPA research grants worth more than \$220 million.

Although the scientific case against particulate matter hasn't improved since the 1990s, the EPA has tightened its grip on CASAC. In effect, EPA-funded researchers are empowered to review and approve their own work in order to rubber-stamp the EPA's regulatory agenda. This is all done under the guise of "independence."

Another "independent" CASAC committee conducted the most recent review of the Obama EPA's ground-level ozone standards. Of that panel's 20 members, 70% were EPA grantees who'd hauled in more than \$192 million from the agency over the years. These EPA panels make decisions by consensus, which has lately been easy enough to achieve considering they are usually chaired by an EPA grantee.

Would-be reformers have so far had no luck changing the culture at these EPA advisory committees. In 2016 the Energy and Environment Legal Institute, where I am a senior fellow, sued the agency. We alleged that the CASAC fine-particulate subcommittee was biased—a clear violation of the Federal Advisory Committee Act. We found a plaintiff who had been refused CASAC membership because of his beliefs about fine particles. Unfortunately, that individual was not willing to take a hostile public stand against the EPA for fear of professional retribution. We ultimately withdrew the suit.

The EPA's opaque selection process for membership on its advisory boards has opened the agency to charges of bias. In 2016 Michael Honeycutt, chief toxicologist of the Texas Commission on Environmental Quality, was recommended in 60 of the 83 nominations to the EPA for CASAC membership. The EPA instead selected Donna Kenski of the Lake Michigan Air Directors Consortium. Ms. Kenski received only one of the 83 recommendations. While no one objected to Mr. Honeycutt's nomination, Sen. James Inhofe (R., Okla.) lodged an objection to Ms. Kenski's nomination, claiming she had exhibited partisanship during an earlier term on the committee.

Congress has also tried to reform the EPA's science advisory process. During the three most recent Congresses, the House has passed bills to provide explicit conflict-of-interest rules for EPA science advisers, including bans on receiving EPA grants for three years before and after service on an advisory panel. The bills went nowhere in the Senate, where the threat of a Democrat-led filibuster loomed. Had they passed, President Obama surely would have vetoed them.

President Trump and his EPA administrator have ample statutory authority to rectify the problem. As Oklahoma's attorney general, Scott Pruitt spent years familiarizing himself with the EPA's unlawful ways. He is in the process of reaffirming the independence of the agency's science advisory committees. This won't mean that committee members can't have a point of view. But a committee as a whole must be balanced and unbiased. Mr. Pruitt's goal is the one intended by Congress—peer review, not pal review.

Mr. Milloy served on the Trump EPA transition team and is the author of "Scare Pollution: Why and How to Fix the EPA."

Appeared in the July 18, 2017, print edition.

Copyright ©2017 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.

September 15, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC)

Administrator Pruitt:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates for service on EPA's chartered CASAC.² You stated in EPA's call for nominations that you "... encourage scientific viewpoints from a full range of stakeholders in order to achieve balanced scientific advice."³ Recently, AAPCA, in conjunction with The Council of State Governments (CSG), created a new resource – located at www.cooperativefederalism.org – entitled *STATES AT THE TABLE: Engaging Energy and Environmental Opportunities with Federal Advisory Committees* to provide information on federal advisory committee opportunities for state officials.⁴

U.S. EPA's list of qualified candidates includes four experts from state environmental agencies: Dr. James Boylan, Georgia Environmental Protection Division (and co-chair of AAPCA's Modeling Committee); Dr. Sabine Lange, Texas Commission on Environmental Quality; Dr. Steve Packham, Utah Department of Environmental Quality; and, Dr. Larry Wolk, Colorado Department of Public Health and Environment. These individuals have demonstrated high levels of competence, knowledge, and expertise in fields relevant to air pollution and air quality issues, and possess significant experience in the technical aspects of National Ambient Air Quality Standards (NAAQS), including cost-benefit analysis, modeling, monitoring, and emissions inventory assessment. Their on-the-ground experience in implementing the NAAQS would be indispensable to CASAC and EPA, and would provide key perspectives in the scientific review process. Each candidate also holds an advanced degree, with impressive academic credentials in fields that include chemical engineering, modeling, risk assessment, toxicology, and public health.

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>. In addition, more information on AAPCA agencies can be found in the recently released report, *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*.

² U.S. EPA Science Advisory Board Staff Office, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Clean Air Scientific Advisory Committee, August 28, 2017.

³ U.S. EPA, "EPA to Accept Nominations for Science Boards," June 27, 2017.

⁴ This resource includes information on federal advisory committees at U.S. EPA, the U.S. Departments of Energy and Interior, and the National Oceanic and Atmospheric Administration, as well as an introduction to the Federal Advisory Committee Act.

AAPCA strongly recommends that EPA consider these state experts in the current chartered CASAC selection process. State, local, and tribal agency personnel possess direct knowledge and experience critical to providing informed, comprehensive, and authoritative understanding of the NAAQS.

EPA should ensure the chartered CASAC and individual NAAQS review panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- According to a May 2015 letter from CSG West: “For EPA’s Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy’s proposed ozone regulations, only one of the 22 panelists came from a state/local perspective.”⁵
- Historically, representation on CASAC committees and panels has been limited to specific regions and a handful of states.⁶
- A survey of twenty state air directors, including both AAPCA members and non-members, provides context for these concerns.⁷ The survey found:
 - A majority of respondents said state and local agencies are not adequately represented on CASAC and its subpanels, and that these panels are not sufficiently geographically diverse.
 - A majority of respondents agreed that the CASAC process for nominating and recommending expert candidates was transparent and clearly understood, but the top three barriers selected by respondents to state personnel serving on CASAC or its subpanels were lack of time to serve, low likelihood of being selected, and a perceived lack of expertise.
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT) included ten state and two tribal members, representing members from seven different EPA regions.⁸
- The *Consolidated Appropriations Act of 2016*, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report also indicated that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented....”⁹
- The Government Accountability Office (GAO) reviewed this policy statement and reported in June 2017 that EPA did “not include specific or numeric goals on increasing membership from states and tribes,” and recommended that the Agency specifically address the Congressional directives.¹⁰
- The U.S. House Appropriations Committee report for H.R. 3354, *the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2018*, again directed EPA “to develop updated policy statements in order to fulfill previous Congressional directives.”¹¹

⁵ The Council of State Governments West, *Letter to Senators Mike Rounds and Edward Markey*, May 19, 2015.

⁶ Data collected from *CASAC entry* in the FACA database, which contains information on panelists back to FY1997.

⁷ Survey results and related presentation are available on AAPCA’s 2016 Spring Meeting website.

⁸ U.S. EPA, *Assumable Waters Sub-Committee*, June 2016. The *Assumable Waters Subcommittee Report* was transmitted via NACEPT on June 2, 2017.

⁹ *Explanatory Statement Submitted for Consolidated Appropriations Act, 2016*, pg. H10220, December 17, 2015.

¹⁰ *GAO Assessment of Updated EPA Policy Statement*, June 8, 2017

¹¹ *Report from the Committee on Appropriations to accompany H.R. 3354*, pg. 62, July 21, 2017.

The Federal Advisory Committee Act requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” CASAC’s charter and the Clean Air Act (CAA) direct EPA to appoint at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The most recent Membership Balance Plan for CASAC, last updated in June 2017, states that “Geographic location may be considered” as the only other balance factor that “EPA identifies as important in achieving a balanced [Federal Advisory Committee].”¹² U.S. EPA’s Peer Review Handbook states that the Agency should “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹³

Geographically diverse state, local, and tribal contributors have unique, direct experience with the NAAQS, including expertise that could help CASAC carrying out the full responsibilities in its charter and Section 109(d) of the CAA. This includes advice on: “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such” NAAQS; “the relative contribution to air pollution concentrations of natural as well as anthropogenic activity”; “areas in which additional knowledge is required to appraise the adequacy and basis of” NAAQS; and, “the research efforts necessary to provide the required information.”

In 2015, the GAO reported that CASAC has not carried out its role in providing some of this advice related to the NAAQS “... because EPA has never asked CASAC to do so.”¹⁴ EPA’s press release calling for nominations also recognized that EPA and CASAC have failed to carry out statutory duties required in the CAA. AAPCA has detailed the historical record confirming GAO’s finding, and identified five avenues for EPA and CASAC to facilitate this advice (including the critical role of experts from state, local, and tribal environmental agencies in reforming the current CASAC review process).¹⁵ Communications from AAPCA members also suggest that state air pollution control agencies would benefit from the full suite of statutorily required advice.¹⁶

EPA should select state air agency experts for the chartered CASAC from this list of qualified candidates. If EPA is unable to select a seven-member chartered CASAC that satisfies CAA requirements for membership and scope of advice, including advice on adverse social, economic or energy effects related to NAAQS, and with geographically and scientifically diverse viewpoints, the EPA Administrator, as the appointing authority, should reconstitute the panel in accordance with 41 CFR 102-3.130.¹⁷ EPA should

¹² CASAC 2017 Membership Balance Plan.

¹³ U.S. EPA, Peer Review Handbook, 4th Edition, October 2015.

¹⁴ U.S. GAO, EPA’S SCIENCE ADVISORY BOARD: Improved Procedures Needed to Process Congressional Requests for Scientific Advice, June 2015.

¹⁵ AAPCA, “Advice and Context: The Role of CASAC in Contextualizing Background Pollution and Adverse NAAQS Effects,” June 2016.

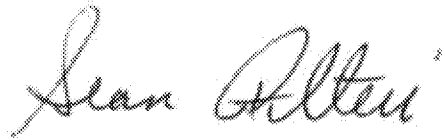
¹⁶ In response to a May 2014 letter from members of the U.S. Senate Committee on Environment and Public Works, the Louisiana Department of Environmental Quality, Mississippi Department of Environmental Quality, North Carolina Department of Environment and Natural Resources (now Department of Environmental Quality), and Texas Commission on Environmental Quality provided feedback on the CASAC process. Multi-state comments on the proposed ozone NAAQS provide perspectives on the role of CASAC. The previously cited survey of state air directors found that more than 80 percent of respondents thought CASAC advice on the full suite of topics in the charter and Section 109(d) of the Clean Air Act, as part of the NAAQS review process, would be helpful.

¹⁷ 41 CFR 102-3.130 states “Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.”

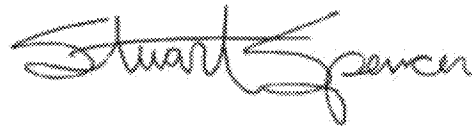
also strongly encourage nominations of qualified state, local, and tribal environmental agency experts for future openings on individual CASAC NAAQS review panels.

Thank you for the opportunity to provide feedback on EPA's excellent list of candidates for CASAC. If you have any questions regarding our comments, please contact Mr. Clint Woods, Executive Director, at cwoods@csg.org or (859) 244-8040.

Sincerely,



Sean Alteri
Director, Kentucky Division for Air Quality
2017 President, AAPCA



Stuart Spencer
Associate Director, Office of Air Quality
Arkansas Department of Environmental Quality
2018 President, AAPCA

September 28, 2017

Mr. Thomas Carpenter
Designated Federal Officer, Science Advisory Board
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Chartered Science Advisory Board (SAB)

Mr. Carpenter:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates under consideration for EPA's chartered SAB.² EPA's call for nominations quoted EPA Administrator Scott Pruitt highlighting that "[t]hese boards play an important role at EPA by providing independent advice based on sound science in support of the agency's mission," and that he strongly encouraged "scientific viewpoints from a full range of stakeholders in order to achieve balanced scientific advice."³ Recently, AAPCA, in conjunction with The Council of State Governments (CSG), created a new resource – located at www.cooperativefederalism.org – entitled *STATES AT THE TABLE: Engaging Energy and Environmental Opportunities with Federal Advisory Committees* to provide information on federal advisory committee opportunities for state officials.⁴

U.S. EPA's list of qualified candidates includes several experts from state environmental agencies with experience and expertise that would enable them to provide independent advice and unique, indispensable perspectives on the suite of scientific issues facing EPA and SAB. The Administrator should look to appoint these officials in leadership roles on the chartered SAB and its subcommittees. These officials possess on-the-ground experience in implementing regulations under the Clean Air Act and other statutes, as well as expertise in disciplines including air quality, public health, chemistry, risk assessment, engineering, modeling, toxicology, and uncertainty and benefit-cost analysis. In addition to the value of this advice from state experts, selecting these nominees for leadership roles could help the Agency in following Congressional directives to increase SAB "membership from States and tribes who are often underrepresented" and the SAB Staff Office's commitment to "expanding the diversity of scientific perspectives on the SAB, including the perspectives from state and local governments..."

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>.

² U.S. EPA Science Advisory Board Staff Office, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Chartered Science Advisory Board, September 7, 2017.

³ U.S. EPA, "EPA to Accept Nominations for Science Boards," June 27, 2017.

⁴ This resource includes information on federal advisory committees at U.S. EPA, the U.S. Departments of Energy and Interior, and the National Oceanic and Atmospheric Administration, as well as an introduction to the Federal Advisory Committee Act.

The SAB is one of the few currently operating EPA advisory committees established by Congress, rather than Agency authority.⁵ The *Environmental Research, Development, and Demonstration Authorization Act of 1978*⁶ (ERDDAA) requires that the Administrator establish the SAB to “provide such scientific advice as may be requested by the Administrator” as well as Congressional committees of jurisdiction. The Board is to be composed of at least nine members (although the Agency’s most recent membership balance plan indicates composition of “about 45 members”)⁷ and each member is to be “qualified by education, training, and experience.” ERDDAA further requires the Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act or other environmental statute is provided for interagency review, to provide such Agency action with relevant technical and scientific information in possession of EPA to the SAB for review. Administrator Pruitt has stated that he intends to “follow applicable legal authorities” as it related to SAB and other advisory committees.⁸ Nominated state officials are uniquely qualified to help EPA and SAB carry out these statutory duties.

EPA should ensure the chartered SAB and its subcommittees and ad hoc panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- The *Consolidated Appropriations Act of 2016*, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report also indicated that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented...”⁹
- The Government Accountability Office (GAO) reviewed EPA’s draft policy statement and reported in June 2017 that “the draft document does not include specific or numeric goals on increasing membership from states and tribes. However, it states that the SAB Staff Office is committed to expanding the diversity of scientific perspectives on the SAB, including the perspectives from state and local governments, tribes, industry, and nongovernmental organizations.” GAO also stated they “continue to encourage the agency to specifically address the directives provided in the explanatory statement.”¹⁰
- The U.S. House Appropriations Committee report for H.R. 3354, *the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2018*, again directed EPA “to develop updated policy statements in order to fulfill previous Congressional directives.”¹¹
- A May 2015 letter from CSG West noted that “states are largely underrepresented in EPA advisory panels” and pointed to the dearth of state/local/tribal experts during recent SAB and CASAC reviews of science related to air quality, hydraulic fracturing, and water connectivity.¹²

⁵ More information on establishment authority can be found at the General Services Administration’s [FACA Database](#).

⁶ 42 U.S.C. 4365.

⁷ <http://www.csg.org/aapca/documents/SABMembershipBalancePlan2017.pdf>.

⁸ https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf.

⁹ *Explanatory Statement Submitted for Consolidated Appropriations Act, 2016*, pg. H10220, December 17, 2015.

¹⁰ *GAO Assessment of Updated EPA Policy Statement*, June 8, 2017

¹¹ *Report from the Committee on Appropriations to accompany H.R. 3354*, pg. 62, July 21, 2017.

¹² The Council of State Governments West, *Letter to Senators Mike Rounds and Edward Markey*, May 19, 2015.

- In May 15, 2017 comments on regulatory reform, the Western Governors Association argued that U.S. EPA should “enhance state representation on the [SAB], as well as on its standing and *ad hoc* committees.”¹³
- Historically, representation on the chartered SAB has been limited to certain geographic areas, and state experts have constituted no more than three advisors on the roughly 50-member panel at any time over the last decade.¹⁴
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT) included ten state and two tribal members, representing members from seven different EPA regions.¹⁵

The *Federal Advisory Committee Act* (FACA) requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” U.S. EPA’s Peer Review Handbook states that the Agency should “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹⁶ 41 CFR 102-3.130 provides the Administrator, as the appointing authority, with the ability to determine membership terms for all SAB members under FACA.¹⁷

EPA should select state environmental agency experts for the chartered SAB from this list of qualified candidates. EPA should also strongly encourage nominations of qualified state, local, and tribal environmental agency experts for future openings on SAB subcommittees and ad hoc panels.

Thank you for the opportunity to provide feedback on EPA’s list of candidates for SAB. If you have any questions regarding our comments, please contact cwoods@csg.org or (859) 244-8040.

Sincerely,



Clinton J. Woods
Executive Director, AAPCA

¹³ http://westgov.org/images/editor/Regulatory_Reform_Task_Forces_-_Final.pdf.

¹⁴ Data collected from SAB entry in the FACA database.

¹⁵ U.S. EPA, *Assumable Waters Sub-Committee*, June 2016. The *Assumable Waters Subcommittee Report* was transmitted via NACEPT on June 2, 2017.

¹⁶ U.S. EPA, *Peer Review Handbook*, 4th Edition, October 2015.

¹⁷ 41 CFR 102-3.130 states “Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.”

November 28, 2016

Dr. Bryan J. Bloomer
Designated Federal Officer
Science Advisory Board
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the EPA Science Advisory Board Ad Hoc Committee for Review of the *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis*

Dr. Bloomer:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates the opportunity to comment on the list of candidates for U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Ad Hoc Committee for reviewing the EPA's Office of Air and Radiation's draft report *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* ("SAB RTR Methods Review Panel").²

In the invitation to comment, EPA notes that "a balanced panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the general charge." Importantly, the list includes experts from state environmental agencies, giving EPA a key opportunity to select individuals that could provide geographically diverse, on-the-ground perspectives, and years of experience addressing emissions of hazardous air pollutants from stationary sources. In particular, the candidates bring expertise in toxicology, health and exposure risk assessment, and air toxics.

AAPCA strongly recommends that EPA's SAB Staff Office consider these state personnel for the SAB RTR Methods Review Panel because of their demonstrated scientific and technical knowledge, as well as their ability to convey diverse expertise and viewpoints.

As the EPA SAB Staff Office reviews these candidates based on the chosen criteria,³ the Agency should ensure state, local and tribal participation in order to obtain input from experts that work with and implement federal Clean Air Act regulations. The need for a wider, more diverse range of advisors on EPA panels is well-noted:

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. Twenty state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>.

² U.S. EPA Science Advisory Board Staff Office, [Invitation for Public Comment on the List of Candidates for the EPA Science Advisory Board Ad Hoc Committee for Review of the Screening Methodologies to Support Risk and Technology Reviews \(RTR\): A Case Study Analysis](#), November 3, 2016.

³ 81 FR 52683.

- The Consolidated Appropriations Act of 2016, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report further directed that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented....”⁴
- U.S. EPA’s Peer Review Handbook (Fourth Edition) directs that the Agency “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”⁵
- Of the 48 members currently on EPA’s chartered SAB, only two are from state agencies. Additionally, as noted in a May 2015 letter from the Council of State Governments West, EPA’s SAB Staff Office has failed to select intergovernmental experts for other SAB ad hoc panels.⁶

Considering for this panel the candidates that have state-level experience and perspectives would be a step in the appropriate direction. As all of the candidates for the SAB RTR Methods Review Panel were identified by the SAB Staff Office “based on their relevant expertise and willingness to serve,” selecting panelists that meet fundamental criteria, such as a “diversity of scientific expertise and viewpoints,” becomes more vital to the process of creating a balanced panel to review this important document.

In addition to fulfilling the need for proper balance on the SAB RTR Methods Review Panel, AAPCA encourages EPA to solicit advice from, and select for advisory committees and panels, experts from state, local and tribal environmental agencies. These agencies can provide critical guidance as EPA looks to future regulatory actions.

Thank you for the invitation to provide comments on this highly qualified list of candidates. If you have any questions, please contact cwoods@csgr.org or (859) 244-8040.

Sincerely,



Clinton J. Woods, Executive Director
AAPCA

⁴ Explanatory Statement Submitted for Consolidated Appropriations Act, 2016, pg. H10220, December 17, 2015

⁵ U.S. EPA, Peer Review Handbook, 4th Edition, October 2015.

⁶ The Council of State Governments West, Letter to Senators Mike Rounds and Edward Markey, May 19, 2015.

July 19, 2016

Mr. Aaron Yeow
Designated Federal Official
U.S. Environmental Protection Agency
Science Advisory Board & Clean Air Scientific Advisory Committee
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC)

Mr. Yeow:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates who represent state air pollution control agencies for service on EPA's chartered CASAC.²

EPA's list of qualified candidates includes several officials from AAPCA member agencies³ as well as from two partner multi-jurisdictional organizations which share state agency members with AAPCA. These individuals possess decades of experience in the technical aspects of National Ambient Air Quality Standards (NAAQS) and have demonstrated high levels of competence, knowledge, and expertise in fields relevant to air pollution and air quality issues. This on-the-ground experience would be indispensable to CASAC and EPA. The candidates also have impressive academic credentials in fields including toxicology, environmental science, zoology, geography, and engineering.

We strongly recommend that EPA's Science Advisory Board (SAB) Staff Office consider these experts in the current chartered CASAC selection process.

EPA should ensure the chartered CASAC and individual NAAQS review panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- According to a May 2015 letter from the Council of State Governments West: "For EPA's Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy's proposed ozone regulations, only one of the 22 panelists came from a state/local perspective."⁴

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. Eighteen state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at <http://www.cleanairect.org>.

² U.S. EPA Science Advisory Board Staff Office, *Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Clean Air Scientific Advisory Committee*, June 20, 2016

³ These include the Arkansas Department of Environmental Quality, Georgia Department of Natural Resources, Ohio Environmental Protection Agency, and the Texas Commission on Environmental Quality.

⁴ The Council of State Governments West, *Letter to Senators Mike Rounds and Edward Markey*, May 19, 2015.

- Historically, representation on CASAC committees and panels has been limited to specific regions and a handful of states.⁵
- A recent survey of twenty state air directors, including both AAPCA members and non-members, provides context for these concerns.⁶ The survey found:
 - A majority of respondents said state and local agencies are not adequately represented on CASAC and its subpanels, and that these panels are not sufficiently geographically diverse.
 - A majority of respondents agreed that the CASAC process for nominating and recommending expert candidates was transparent and clearly understood, but the top three barriers selected by respondents to state personnel serving on CASAC or its subpanels were lack of time to serve, low likelihood of being selected, and a perceived lack of expertise.
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the recently constituted Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology includes ten state and two tribal members, representing members from seven different EPA regions.⁷
- The Consolidated Appropriations Act of 2016, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report further directed that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented....”⁸

Statutory requirements and federal committee composition directives also suggest a robust role for geographically diverse state, local, and tribal experts in the scientific advisory process. CASAC’s charter and the Clean Air Act direct EPA to appoint *at least* one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The most recent Membership Balance Plan for CASAC, last updated in 2015, states that “Geographic location may be considered” as the only other balance factor that “EPA identifies as important in achieving a balanced [Federal Advisory Committee].”⁹ The Federal Advisory Committee Act requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” The most recent edition of U.S. EPA’s Peer Review Handbook directs that the Agency “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹⁰ Related policy from the National Academies argues that it may be critical to have a particular perspective on a panel, even though an individual is not a representative of their interests, “because such individuals, through their particular knowledge and experience, are often vital to achieving an informed, comprehensive, and authoritative understanding and analysis of the specific problems and potential solutions to be considered by the committee.”¹¹

⁵ Data collected from CASAC entry in the FACA database, which contains information on panelists back to FY1997.

⁶ Survey results and related presentation are available on AAPCA’s 2016 Spring Meeting website.

⁷ U.S. EPA, Assumable Waters Sub-Committee, June 2016.

⁸ Explanatory Statement Submitted for Consolidated Appropriations Act, 2016, pg. H10220, December 17, 2015.

⁹ CASAC 2015 Membership Balance Plan.

¹⁰ U.S. EPA, Peer Review Handbook, 4th Edition, October 2015.

¹¹ The National Academies, Policy on Committee Composition and Balance and Conflicts of Interest for Committees used in the Development of Reports, May 12, 2003.

AAPCA recognizes the distinction between technical advisory committees like CASAC, in which panelists serve as “Special Government Employees,” and representative advisory committees, but we believe that state, local, and tribal agency personnel possess particular knowledge and experience critical to providing informed, comprehensive, and authoritative understanding of the NAAQS.

Geographically diverse state, local, and tribal contributors provide unique, on-the-ground experience with the NAAQS, including expertise that could help CASAC carrying out the full responsibilities in its charter and Section 109(d) of the Clean Air Act. This includes advice on: “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such” NAAQS; “the relative contribution to air pollution concentrations of natural as well as anthropogenic activity”; “areas in which additional knowledge is required to appraise the adequacy and basis of” NAAQS; and “the research efforts necessary to provide the required information.” The Government Accountability Office (GAO) has determined that CASAC has not carried out its role in providing some of this advice related to the NAAQS “because EPA has never asked CASAC to do so.”¹² Communications from AAPCA Members suggest that state air pollution control agencies would benefit from the full suite of statutorily required advice.¹³

In light of this evidence on the potential benefits of expanding geographically diverse state, local, and tribal participation on CASAC and other advisory activities, AAPCA also suggests that EPA should encourage nominations of, and seriously consider, qualified state, local, and tribal environmental agency experts for future openings on the chartered CASAC (including for those openings not statutorily required to be filled by a representative of state air pollution control agencies) as well as individual CASAC NAAQS review panels.

Thank you for the opportunity to provide feedback on EPA’s excellent list of candidates for CASAC. If you have any questions regarding our comments, please contact cwoods@csg.org or (859) 244-8040.

Sincerely,



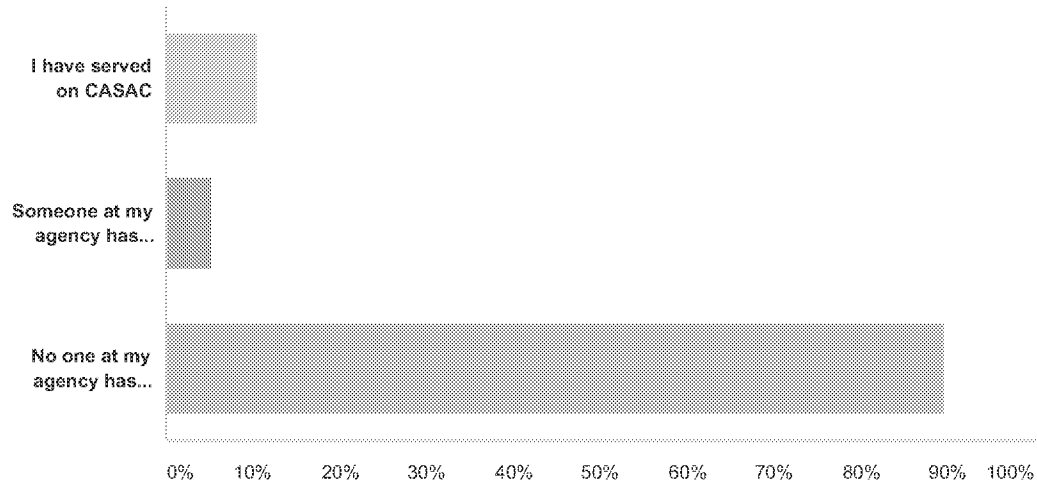
Clinton J. Woods, Executive Director
AAPCA

¹² U.S. GAO, EPA’S SCIENCE ADVISORY BOARD: Improved Procedures Needed to Process Congressional Requests for Scientific Advice, June 2015.

¹³ In response to a May 2014 letter from members of the U.S. Senate Committee on Environment and Public Works, the Louisiana Department of Environmental Quality, Mississippi Department of Environmental Quality, North Carolina Department of Environment and Natural Resources (now Department of Environmental Quality), and Texas Commission on Environmental Quality provided feedback on the CASAC process. Multi-state comments on the proposed ozone NAAQS provide perspectives on the role of CASAC. The previously cited survey of state air directors found that more than 80 percent of respondents thought CASAC advice on the full suite of topics in the charter and Section 109(d) of the Clean Air Act, as part of the NAAQS review process, would be helpful.

Q2 Have you or anyone in your agency ever served on the chartered CASAC or on its subpanels since 2000?

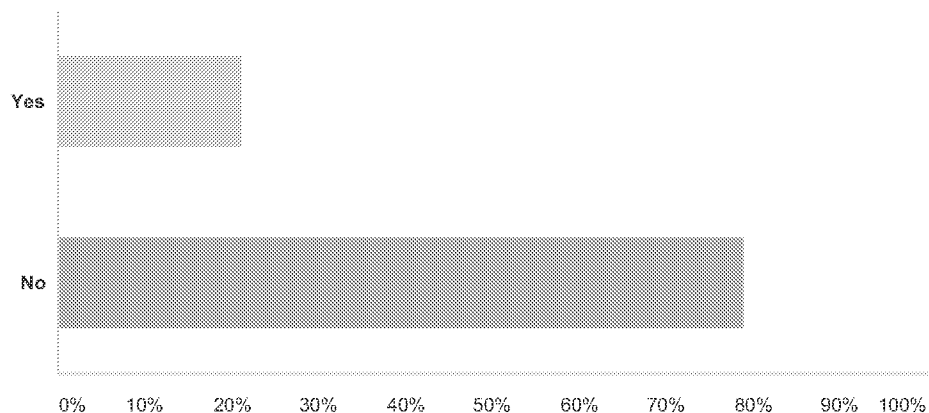
Answered: 19 Skipped: 1



Answer Choices	Responses	
I have served on CASAC	10.53%	2
Someone at my agency has served on CASAC	5.26%	1
No one at my agency has served on CASAC	89.47%	17
Total Respondents: 19		

Q3 Have you or anyone in your agency been nominated for the chartered CASAC or individual NAAQS subpanels since 2000?

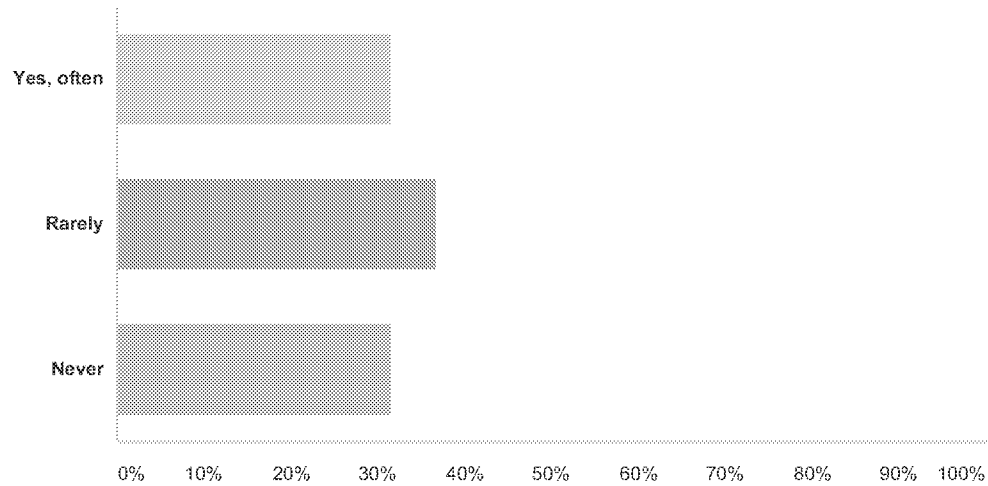
Answered: 19 Skipped: 1



Answer Choices	Responses	
Yes	21.05%	4
No	78.95%	15
Total		19

Q4 Have you or anyone in your agency participated in the CASAC review process through attending in-person meetings, providing written or oral comments to CASAC, or joining teleconferences?

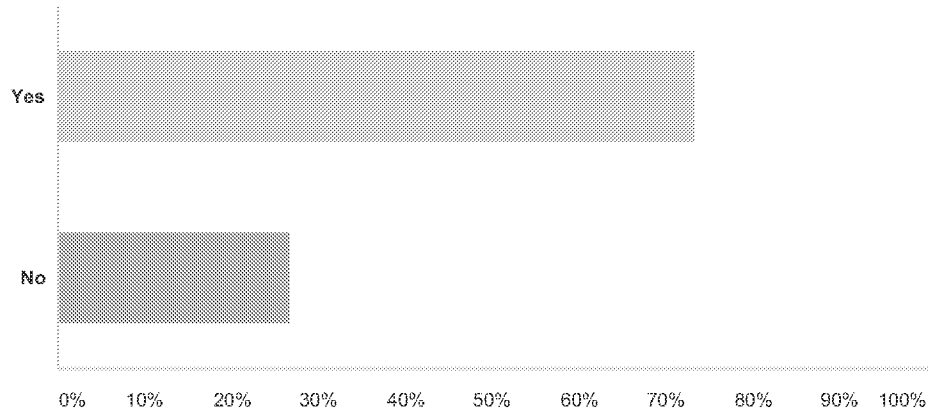
Answered: 19 Skipped: 1



Answer Choices	Responses	
Yes, often	31.58%	6
Rarely	36.84%	7
Never	31.58%	6
Total		19

Q5 Is the CASAC process for nominating and recommending expert candidates transparent and clearly understood?

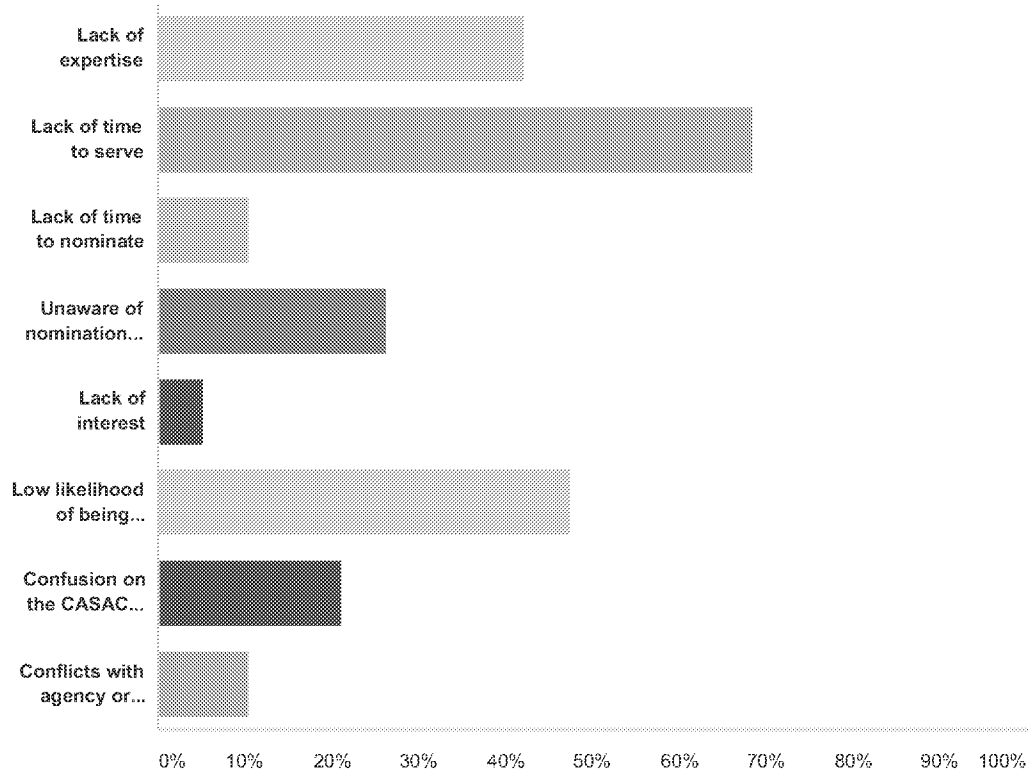
Answered: 15 Skipped: 5



Answer Choices	Responses	
Yes	73.33%	11
No	26.67%	4
Total		15

Q6 What are the barriers to you or anyone in your agency serving on CASAC or its subpanels. Please select all that apply.

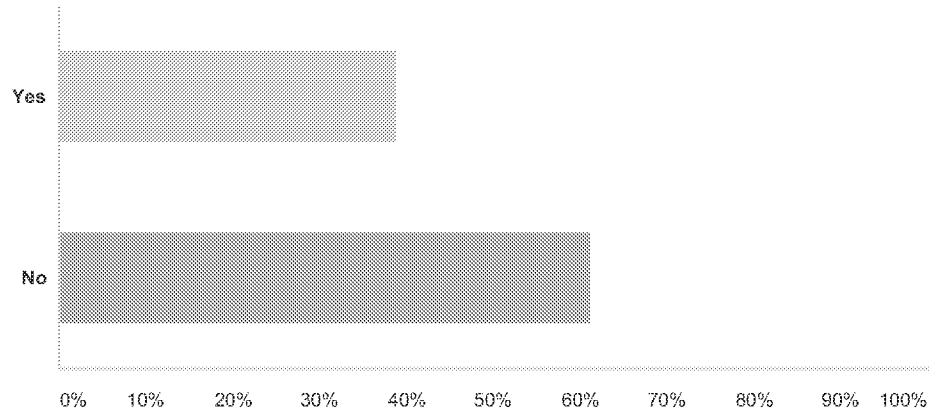
Answered: 19 Skipped: 1



Answer Choices	Responses	
Lack of expertise	42.11%	8
Lack of time to serve	68.42%	13
Lack of time to nominate	10.53%	2
Unaware of nomination openings	26.32%	5
Lack of interest	5.26%	1
Low likelihood of being selected	47.37%	9
Confusion on the CASAC nomination process	21.05%	4
Conflicts with agency or institution policies	10.53%	2
Total Respondents: 19		

Q7 Do you feel that state and local agencies are adequately represented on CASAC and its subpanels?

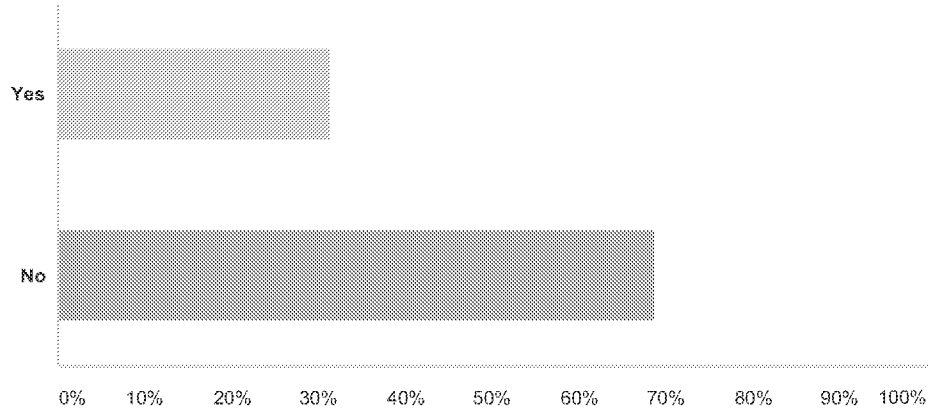
Answered: 18 Skipped: 2



Answer Choices	Responses	
Yes	38.89%	7
No	61.11%	11
Total		18

Q8 The Federal Advisory Committee Act requires advisory panels like CASAC to be fairly balanced in terms of the points of view represented and the functions performed by the advisory committee. Do you believe CASAC meets this requirement?

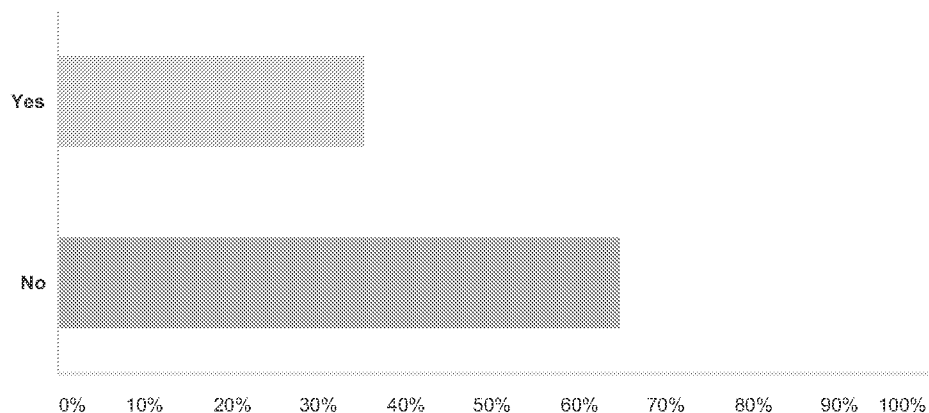
Answered: 16 Skipped: 4



Answer Choices	Responses	
Yes	31.25%	5
No	68.75%	11
Total		16

Q9 Are the chartered CASAC and its subpanels sufficiently geographically diverse?

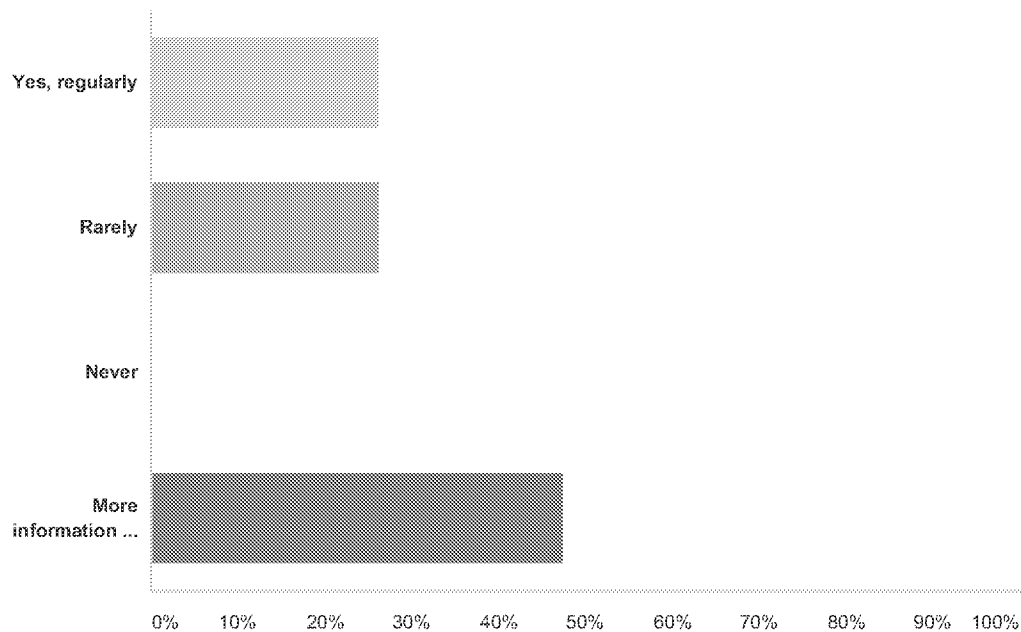
Answered: 17 Skipped: 3



Answer Choices	Responses	
Yes	35.29%	6
No	64.71%	11
Total		17

Q10 In addition to recommending "to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate," CASAC, under Section 109(d) of the Clean Air Act, "shall also...advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity." Do you believe that CASAC has carried out this duty?

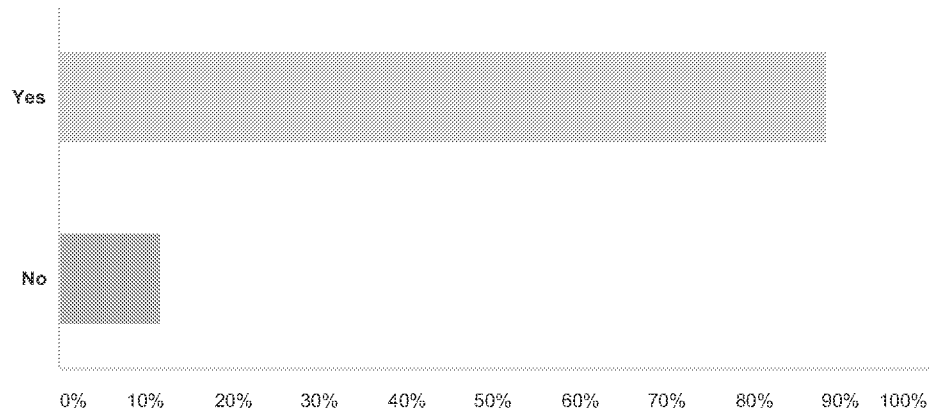
Answered: 19 Skipped: 1



Answer Choices	Responses	
Yes, regularly	26.32%	5
Rarely	26.32%	5
Never	0.00%	0
More information is needed	47.37%	9
Total		19

Q11 Would CASAC advice on the "relative contribution to air pollution concentrations of natural as well as anthropogenic activity," as part of the NAAQS review process, be helpful to your agency?

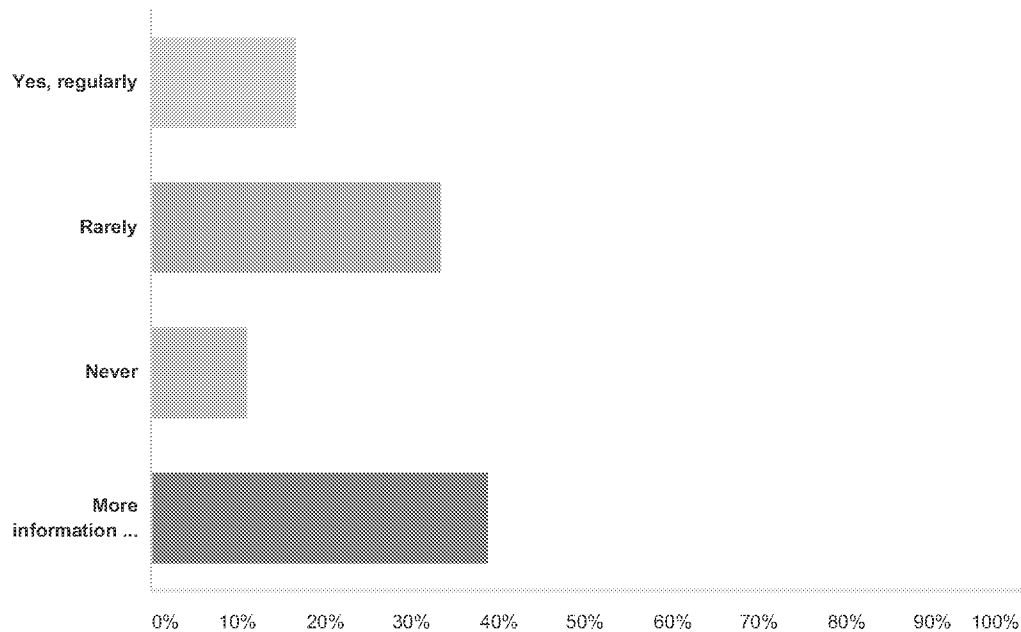
Answered: 17 Skipped: 3



Answer Choices	Responses	
Yes	88.24%	15
No	11.76%	2
Total		17

Q12 In addition to recommending "to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate," CASAC, under Section 109(d) of the Clean Air Act, "shall also...advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards." Do you believe that CASAC has carried out this duty?

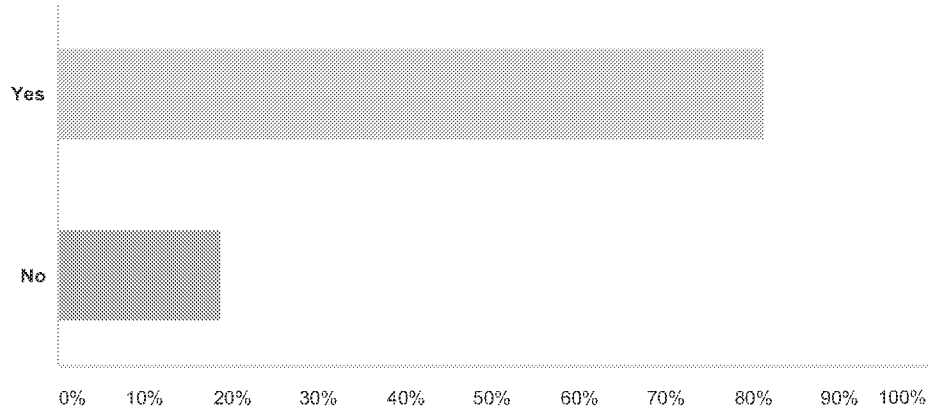
Answered: 18 Skipped: 2



Answer Choices	Responses	
Yes, regularly	16.67%	3
Rarely	33.33%	6
Never	11.11%	2
More information is needed	38.89%	7
Total		18

Q13 Would CASAC advice on "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards," as part of the NAAQS review process, be helpful to your agency?

Answered: 16 Skipped: 4



Answer Choices	Responses	
Yes	81.25%	13
No	18.75%	3
Total		16

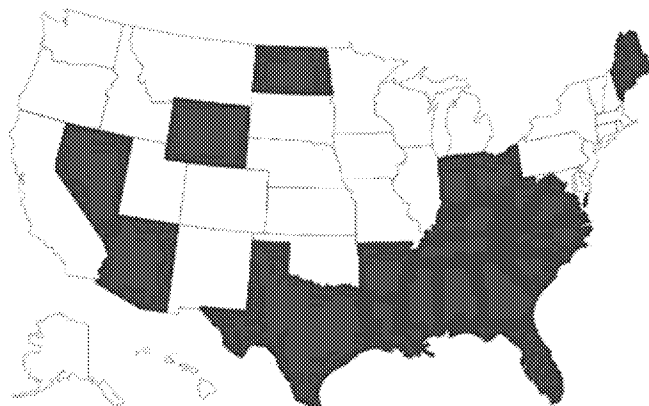
Introduction to AAPCA

The Association of Air Pollution Control Agencies (AAPCA) is a consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA's members work collaboratively on behalf of states and the communities they protect to act as a conduit for and provide feedback to federal regulators on air quality rules that have significant impacts across the entire nation. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliated association of the Council of State Governments (CSG).

Association of Air Pollution Control Agencies | 1776 Avenue of the States | Lexington, Kentucky 40511
www.cleanairact.org | [@AAPCA_States](https://twitter.com/AAPCA_States)

State Environmental Agencies Currently Represented on AAPCA's Board of Directors

Alabama | Arizona | Arkansas | Florida
Georgia | Indiana | Kentucky | Louisiana
Maine | Mississippi | Nevada
North Carolina | North Dakota | Ohio
South Carolina | Tennessee | Texas
Virginia | West Virginia | Wyoming



Footprint of AAPCA State Members

State members of AAPCA's Board of Directors have primary responsibility for air quality for a segment of the country that represents:

- Over 140 million Americans, nearly half of the U.S. population;
- More than 45 percent of U.S. Total Manufacturing Output; and,
- 60 percent of total energy production in the United States.

2017 AAPCA Officers and Technical Committees

President | [Sean Alteri](#), Kentucky Division for Air Quality, (502) 564-3999

Vice President | [Stuart Spencer](#), Arkansas Department of Environmental Quality, (501) 683-0873

Secretary/Treasurer | [Vivian Aucoin](#), Louisiana Department of Environmental Quality, (225) 219-3417

Past President | [Sheila Holman](#), North Carolina Department of Environmental Quality, (919) 707-8430

AAPCA's members participate on eleven technical committees that provide information-sharing forums for agency personnel on the following topics: Training; Best Practices; NAAQS/SIP; Modeling; Emission Inventory; Local Government; Ambient Monitoring; Compliance, Enforcement, and Testing; Permitting and New Source Review (NSR); Energy; and Public Outreach & Information.

Recent and Forthcoming AAPCA Activities

Meetings

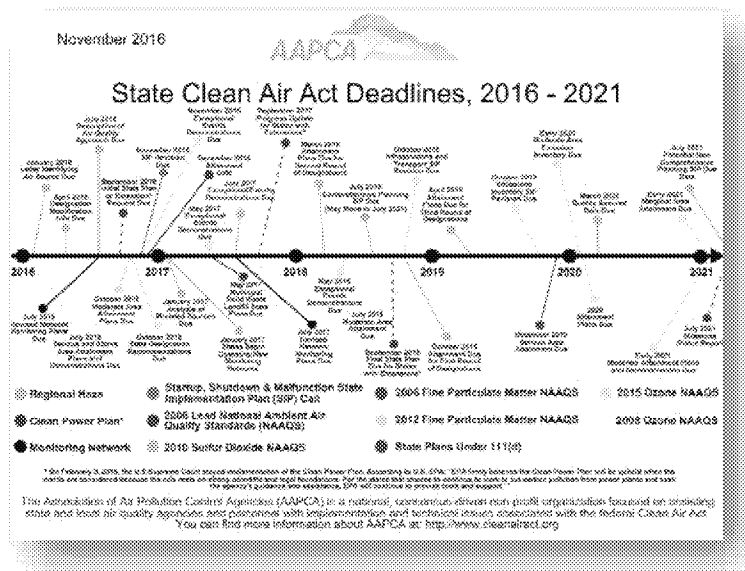
AAPCA's [membership meetings](#) offer a premier venue to engage with senior air quality officials from state and local agencies, and U.S. EPA. In 2017, AAPCA will host two in-person meetings:

- Spring Meeting, March 27 – 29, Tucson, Arizona [presentations available [here](#)]
- Annual Business Meeting, September 20 – 22, Raleigh, North Carolina

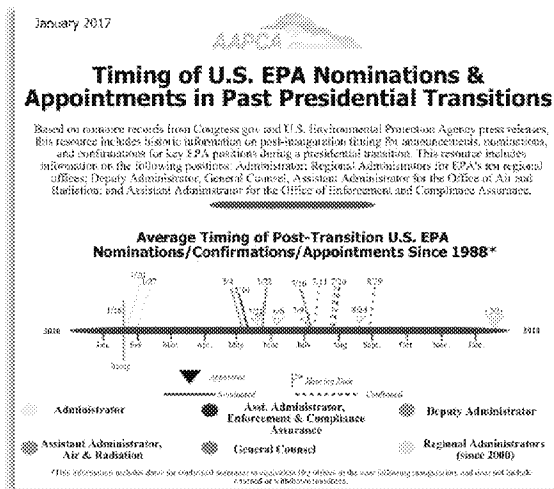
Timelines and Factsheets

AAPCA has recently released several timelines and factsheets:

- [State Clean Air Act Deadlines, 2016 - 2021](#) (updated November 2016):



- In December 2016, AAPCA released an updated timeline, [Forthcoming & Initiated Clean Air Act Regulatory Actions, 2016 - 2020](#).
- [Timing of U.S. EPA Nominations & Appointments in Past Presidential Transitions](#) (January 2017)
- In October 2016, AAPCA released a fact sheet, [Preparing for Personal Air Sensors: Definition, Opportunities, and Data Limitations](#).



Consensus Comments

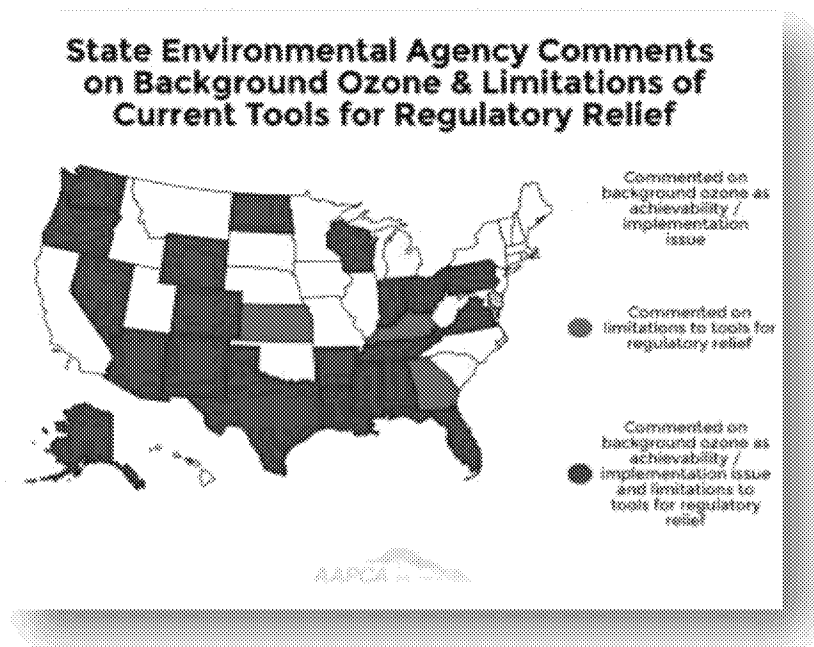
AAPCA has recently provided feedback to U.S. EPA on several topics: U.S. EPA's [Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard](#); [data display issues](#) on U.S. EPA's Enforcement and Compliance History Online (September 2016); the [list of candidates](#) for U.S. EPA's Science Advisory Board Ad Hoc Committee for Review of the *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (November 2016); the proposed [Regional Haze Rule Amendments](#) (August 2016); the [list of candidates](#) for U.S. EPA's Clean Air Scientific Advisory Committee (July 2016); the proposed [Revision to the Near-Road NO₂ Minimum Monitoring Requirements](#) (June 2016); and [Treatment of Data Influenced by Exceptional Events and draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone](#) (February 2016).

AAPCA has also requested extension of the public comment periods for U.S. EPA's: [draft Guidance on Modeled Emission Rates for Precursors and PM_{2.5} Precursor Demonstration](#) (January 2017); [Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements](#), (December 2016); [Draft Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program](#) (September 2016); and [Protection of Visibility: Amendments to Requirements for State Plans](#) (June 2016).

Surveys of State Perspectives

AAPCA also conducts surveys of state agency perspectives:

- [Perspectives on EPA's Clean Air Scientific Advisory Committee](#) (April 2016)
- [State Environmental Agency Perspectives on Timely NAAQS Implementation](#) (September 2015)
- [State Environmental Agency Perspectives on Background Ozone & Regulatory Relief](#) (June 2015)



Resource Pages

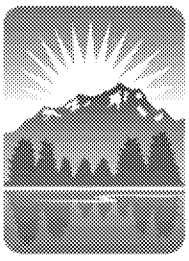
AAPCA has compiled state and local agency comments on recent Clean Air Act issues, including: [Response to December 9, 2013 CAA Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont \(comment deadline: April 13, 2017\)](#); [Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard \(NAAQS\) \(comment deadline: April 6, 2017\)](#); [Implementation of the 2015 NAAQS for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements \(comment period closed 2/13/2017\)](#); [Protection of Visibility: Amendments to Requirements for State Plans \(final rule published 1/10/2017\)](#); [Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards \("CSAPR Update"; final rule published 10/26/2016\)](#); [Proposed Exceptional Events Rule Revisions & Draft Wildfire Guidance \(final rule published 10/3/16\)](#); [Startup, Shutdown and Malfunction State Implementation Plan Call \("SSM SIP Call"; final action published 5/22/2015\)](#); the proposed [2015 Ozone NAAQS \(final rule published 10/26/2015\)](#); the [Volkswagen litigation and mitigation](#); [permitting updates](#); and [personal air sensors](#).

Forthcoming Projects

In 2017, AAPCA and the Council of State Governments are developing a joint project, entitled [States at the Tables: Engaging Energy and Environmental Federal Advisory Committees](#). This portal will serve as a comprehensive resource for state leaders from all three branches of government regarding opportunities to interact with federal energy and environmental agencies through Federal Advisory Committees. More information will be available at: www.cooperativefederalism.org.



In April 2017, AAPCA anticipates releasing a report entitled *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*, which compiles indicators and metrics to illustrate the progress of air pollution control in the United States.



WESTERN GOVERNORS' ASSOCIATION

Steve Bullock
Governor of Montana
Chair

Dennis Daugaard
Governor of South Dakota
Vice Chair

James D. Ogsbury
Executive Director

Headquarters

1600 Broadway
Suite 1700
Denver, CO 80202

303-623-9378
Fax 303-534-7309

Washington, D.C.

400 N. Capitol Street, N.W.
Suite 376
Washington, D.C. 20001

202-624-5402
Fax 202-624-7707

www.westgov.org

May 15, 2017

Justin Clark
Director of Intergovernmental Affairs
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. Clark:

President Trump's Executive Order 13777 (E.O.), Enforcing the Regulatory Reform Agenda, requires that federal agencies seek input and assistance from states. Western Governors appreciate this requirement and commend to your attention WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship, as a good starting point for reform of federal regulatory processes.

Western Governors believe that one of the most important and durable reforms the President could undertake is to work with them to realign the relationship of the federal government and states so that it operates as a true partnership. Such realignment could be significantly advanced by a serious effort to redefine state-federal consultation coupled with agency accountability for engagement in that process.

Pursuant to Western Governors' definition of true consultation:

Each Executive department and agency should be required to have a clear and accountable process to provide each state – through its Governor as the top elected official of the state and other representatives of state and local governments as he or she may designate – with *early, meaningful and substantive* input in the development of regulatory policies that have federalism implications. This includes the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budgets and strategic planning.

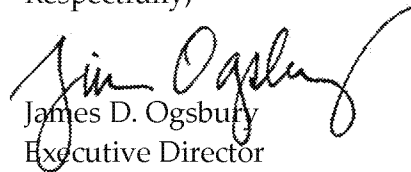
WGA has prepared the attached agency-by-agency menu of reforms for consideration by the White House and various departmental Regulatory Reform Task Forces. These options are informed by Governors' past interactions with federal agencies. We believe they can be useful in initiating realignment of the state-federal relationship, an objective that is consistent with the purposes of the President's E.O.

Justin Clark
May 15, 2017
Page 2

Western Governors are excited to work in authentic partnership with the federal government. Governors are optimistic that the new Administration will be eager to unleash the power and creativity of states for the common advantage of our country. By working cooperatively with the states, the Administration can create a legacy of renewed federalism, resulting in a nation that is stronger, more resilient and more united.

We hope this menu of reforms will be a useful resource to the various Regulatory Reform Task Forces. The Western Governors' Association is prepared to help coordinate the participation of Western Governors in this very important effort.

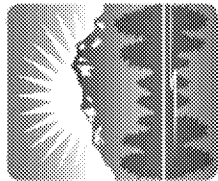
Respectfully,



James D. Ogsbury
Executive Director

Attachment

cc: Honorable Ryan Zinke, Secretary of the Interior
Honorable Sonny Perdue, Secretary of Agriculture
Honorable Scott Pruitt, Administrator, Environmental Protection Agency
Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers



WESTERN GOVERNORS' ASSOCIATION

Realigning the State-Federal Relationship

Agency-by-Agency Menu of Possible Reforms

This document contains a variety of process improvement recommendations informed by Western Governors' policy resolutions and previous interactions with the Administration and Congress. The Governors' primary priorities for regulatory reform are articulated in [WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship](#).

The document begins with a presentation of cross-cutting recommendations (those impacting more than one agency), followed by agency-specific recommendations. It was developed to as a practical tool for the Executive Branch and Congress as they consider regulatory process improvements.

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
CROSS-CUTTING		
White House Congress	Establish a federalism office in the executive branch - potential models include the U.S. Advisory Commission on Intergovernmental Relations (ACIR) and Council on Environmental Quality (CEQ).	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
White House	Revise Executive Order 13123, <i>Federalism</i> .	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
Congress	Establish a permanent Joint Select Committee on Intergovernmental Relations.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
White House Agencies Congress	Governors have specifically defined "consultation." Seek opportunities for more meaningful consultation through: agency-specific processes; Executive Branch cross-cutting regulatory efforts (such as those outlined in recent E.O.s); administrative reorganization, and Congressional regulatory reform initiatives.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u> Letter to Agencies: Executive Order, "Enforcing the Regulatory Reform Agenda": DOI, USDA, USCOE
Congress	Clarify definitions in key enabling statutes to better define state-federal consultation.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
White House Agencies Congress	Clarify which federal actions trigger the state consultation requirements under E.O. 13132, <i>Federalism</i> . Federal agencies have recently contemplated excluding certain regulatory activities (such as agency procedures, directives development, and handbook or manual updates) from the APA process (see 80 FR 74740, November 30, 2015, RFI Regarding Involving the Public in the Formulation of Forest Service Directives). This would preclude the application of notice and comment requirements to a great deal of regulatory activity and could operate to diminish the role of states in the development of these significant regulatory tools.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u> Comments: USFS Groundwater Directive

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
White House/ CEQ Congress	Better define "cooperating agency" under NEPA processes.	
White House Agencies Congress	Infrastructure planning and permitting guidelines, rules, and regulations should be coordinated, streamlined, and sufficiently flexible to: (i) allow for timely decision-making in the design, financing, and construction of needed infrastructure; (ii) account for regional differences; (iii) balance economic and environmental considerations; and (iv) minimize the costs of compliance.	WGA Policy Resolution 2015-08: Water Resource Management in the West
White House Congress	Develop an E.O. or legislation that: ensures a more focused and streamlined federal approach to invasive species issues and that promotes greater coordination, collaboration, and communication with states and Pacific islands; and provides for greater transparency of invasive species data and management decisions.	WGA Policy Resolution 2016-05, Combating Invasive Species Letter: Concern regarding invasive species management Testimony: Oversight Hearing on Invasive Species Letter: Recommendations for state experts for Invasive Species Advisory Council
White House Congress	Require agencies to develop step-by-step internal guidelines on compliance with the preemption provisions of the Federalism E.O.; and Require internal oversight procedure by which agency scrutinizes potential preemptions of state authority.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
White House Congress	Require OMB/OIRA to update directions to agencies "federalism official" designations and "consultation plans." These directions should describe how agencies identify policies with federalism implications and the procedures agencies will use to ensure meaningful and timely consultation with states. Make consultations plans and contact information for designated federalism officials publicly available.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
White House	Improve preemption and federalism review requirements in OIRA's "A-4 Circular" checklist.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
Congress	Strengthen existing statutory savings clauses and incorporate savings clauses in new legislation as opportunities arise.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
Congress	Request a GAO analysis of how often federalism reviews occur in key agencies and what they include.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
Congress	Seek mandatory use of state data and expertise, subject to existing state requirements for data protection and transparency.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u> <u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u> <u>WGA Policy Resolution 2014-14, State Wildlife Science, Data and Analysis</u> <u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
Congress	Require agencies to assure state participation in relevant federal science boards by requiring the selection of state scientists to serve on science-based groups informing federal regulation (e.g. EPA Science Advisory Board panels).	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship Appropriations Requests Testimony, FY 2015
White House Agencies Congress	Seek mandatory use of a refined model for federal land management agencies' economic impact and cost/benefit analyses designed in conjunction with affected states and counties.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
White House Agencies Congress	Require agencies to share assumptions supporting federalism assessment impact analyses. (n.b. In a previous CERCLA 108(b) federalism assessment process, EPA refused to share assumptions or modeling information with states. See details here .)	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
DEPARTMENT OF AGRICULTURE		
United States Forest Service (USFS)		
Congress	Clarify definitions in key enabling statutes such as NFMA, MUSYA, and FRRRPA to better define state-federal consultation.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
White House Agencies	Consult with states in a meaningful way prior to proposing directives or rules affecting states' management and allocation of water resources.	WGA Policy Resolution 2015-08, Water Resource Management in the West

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	(n.b. USFS previously contemplated excluding certain regulatory activities (such as agency procedures, directives development, and handbook or manual updates) from the APA process [see 80 FR 74740, November 30, 2015, RFI Regarding Involving the Public in the Formulation of Forest Service Directives]. This would preclude the application of notice and comment requirements to a great deal of regulatory activity and could diminish the role of states in the development of these significant regulatory tools.)	<p><u>WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship</u></p> <p><u>Appropriations Requests Testimony, FY 2016, 2017</u></p> <p><u>Testimony: State Authority over Water Management</u></p> <p><u>Comments: USFS Groundwater Directive</u></p> <p><u>Letter: Concern on USFS Proposed Groundwater Management Directive</u></p> <p><u>Comments: Ski Area Water Rights on Forest Service Lands</u></p> <p><u>Comments: Proposed USFS Directive for National Best Management Practices for Water Quality</u></p>
<p>White House/CEQ</p> <p>Agencies</p>	<p>Increase state-federal coordination to complete the siting and permitting of electricity transmission across federal lands within three years of submission of a completed application.</p> <p>Include meaningful state consultation as a required component of the west-wide energy corridor designation process under section 368 of the Energy Policy Act of 2005.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Comments: The first iteration of DOE's Quadrennial Energy Review</u></p> <p><u>Comments: DOE Integrated, Interagency Pre-Application Process proposal</u></p> <p><u>Comments: DOE Integrated, Interagency Pre-application Process proposal</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p> <p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
		<p><u>Letter: Request for substantive partnership in Section 368 energy corridor designation process</u></p> <p><u>Letter: Offer to work with federal agencies on western energy Section 368 corridors</u></p>
White House Agencies	<p>Consult with states in development of a consistent, cross-agency process for identifying and selecting highest priority hazardous fuels projects.</p> <p>Involve states in development and implementation of risk assessment tools for identifying and prioritizing hazardous fuels reductions projects on western NFS lands.</p> <p>Implement tracking measurements to quantify and report acres treated for hazardous fuels reduction as an accomplishment only after an entire project has been completed and the desired condition is achieved.</p>	<p><u>USFS Inspector General's Report "Forest Service Wildland Fire Activities -- Hazardous Fuels Reduction." (July, 2016)</u></p>
White House Agencies	<p>Federal statutes require federal land management agencies to establish a balance between multiple uses of public lands. Take steps to account for local needs and state priorities when evaluating the viability of various uses.</p>	<p><u>WGA Policy Resolution 2016-01 National Forest and Rangeland Management</u></p> <p><u>WGA National Forest and Rangeland Management Initiative</u></p>
Agencies	<p>Expand use of authorities included in the 2014 Farm Bill to increase the pace and scale of forest management and restoration on western National Forests and adjacent non-federal lands;</p> <p>Expand opportunities for state and local collaborative involvement in decision-making processes.</p>	<p><u>Appropriations Requests Testimony, FY 2016, 2017</u></p> <p><u>Letter: Support for accelerated implementation of forest management projects</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>Target funding from USFS, BLM, NRCS and state sources to address cross-boundary management goals in priority areas consistent with state forest action plans. Increase training of state, tribal, and other partners in USFS analysis, administration, and business practices to facilitate interagency implementation of cross-boundary projects.</p> <p>Enable State leadership to reinforce and reward collaboration on USFS and DOI planning and projects.</p>	
Agencies	Identify fuels management priorities in consultation with states to focus resources on greatest wildfire threats.	<p><u>2014-10 Regional Wildfire Fighting Resources</u></p> <p>Letter: State collaboration in addressing rangeland fire risk</p>
DEPARTMENT OF COMMERCE		
National Marine Fisheries Service (NMFS)		
	Provide regulatory and statutory avenues to implement forthcoming recommendations produced by the Western Governors' Species Conservation and ESA Initiative.	<u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u>
	Require petitioners to provide a copy of petitions to affected state(s) so states may provide any existing state data regarding the petitioned species.	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p>Comments: Endangered & Threatened Wildlife and Plants: Revisions to the Regulations for Petitions</p>
	Limit critical habitat designations for broadly distributed species to only the area deemed necessary by the best available science. Critical habitat designations should be based on analysis that	<u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	includes data and scientific information from states included in proposed critical habitat. Engage states as full partners in critical habitat designations, especially when federal agencies intend to rely on the precautionary principle, coupled with the use of long-term modeling and forecasting.	<u>Comments: Implementing Changes to the Regulations for Designating Critical Habitat</u>
	Utilize data and expertise provided by states in conducting status reviews and 12-month findings on petitions for listing species under the ESA.	WGA Policy Resolution 2016-08, <u>Species Conservation and the Endangered Species Act</u> <u>Comments: Use of State Data & Expertise in ESA Listing Methodology</u>
National Oceanic and Atmospheric Administration (NOAA)		
	Work with states and resource managers to improve predictive and adaptive capabilities for extreme weather variability and related impacts, with a priority on improving sub-seasonal and seasonal precipitation forecasting capabilities to support water management decision-making.	WGA Policy Resolution 2015-08, <u>Water Resource Management in the West</u> <u>Letter: Support for federal drought relief legislation</u>
DEPARTMENT OF DEFENSE		
United States Army Corps of Engineers (USACE)		
	Promote early, meaningful consultation with states in the promulgation or development of any rules, regulations, directives, or agency action that affects or influences states' management or allocation of water resources, including "surplus" water supplies in USACE reservoirs or water storage projects.	WGA Policy Resolution 2015-08, <u>Water Resource Management in the West</u> <u>Letter: Concern regarding U.S. Army Corps of Engineers water surplus rule</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	Any attempts to define the jurisdictional scope of "Waters of the United States" in the Clean Water Act must respect limits set by Congress and the U.S. Supreme Court, recognizing the authority of states to manage water within their boundaries.	<p><u>WGA Policy Resolution 2015-08, Water Resource Management in the West</u></p> <p><u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u></p> <p><u>Comments: Final Waters of the United States (WOTUS) Rule</u></p> <p><u>Request for Extended Comment Period - Waters of the United States (WOTUS) Rule</u></p> <p><u>Letter: Concern regarding Clean Water Act jurisdiction rulemaking</u></p>
DEPARTMENT OF ENERGY		
	Work cooperatively with states in implementing a policy to ensure the safe transportation, storage, and disposal of spent fuel and high-level waste.	<p><u>WGA Policy Resolution 2016-03: Transportation of Radioactive Waste, Radioactive Materials and Spent Nuclear Fuel</u></p> <p><u>2017-05 Storage and Disposal of Radioactive Waste and Spent Nuclear Fuel</u></p>
	Require consent of an affected state's Governor before allowing construction of a centralized interim storage facility.	<p><u>WGA Policy Resolution 2016-03: Transportation of Radioactive Waste, Radioactive Materials and Spent Nuclear Fuel</u></p> <p><u>WGA Policy Resolution 2017-05 Storage and Disposal of Radioactive Waste and Spent Nuclear Fuel</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>Increase state-federal coordination to complete the siting and permitting of electricity transmission across federal lands within three years of submission of a completed application.</p> <p>Include meaningful state consultation as a required component of the west-wide energy corridor designation process under section 368 of the Energy Policy Act of 2005.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission Comments: The first iteration of DOE's Quadrennial Energy Review</u></p> <p><u>Comments: DOE Integrated, Interagency Pre-Application Process proposal</u></p> <p><u>Comments: DOE Integrated, Interagency Pre-application Process proposal</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p> <p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Request for substantive partnership in Section 368 energy corridor designation process</u></p> <p><u>Letter: Offer to work with federal agencies on western energy Section 368 corridors</u></p>
FEDERAL ENERGY REGULATORY COMMISSION		
	<p>Existing state hydropower licensing authorities should not be replaced or in any way impeded by FERC jurisdiction.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Hydropower facility licensing authorities</u></p> <p><u>Comments: The feasibility of a two-year licensing process for small hydropower projects</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
ENVIRONMENTAL PROTECTION AGENCY		
	Clarify key enabling statutes such as CAA, CWA, RCRA, CERCLA to better define delegated authority of states.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
	Use of state science should be a predicate for rulemaking decisions. Enhance state representation on the Science Advisory Board (SAB), as well as on it standing and <i>ad hoc</i> committees. State participation should constitute no less than 10% of the membership of SAB committees, subcommittees, and subject matter panels.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u> <u>Appropriations Requests Testimony, FY 2015</u>
	Consult with Western Governors and state regulators prior to determining whether to pursue any CERCLA section 108(b) financial assurance regulations. In the event EPA opts to pursue regulation of any industry subject to such regulation, it should enter substantive pre-publication consultation with Western Governors and state regulators.	<u>WGA Policy Resolution 2017-06; Financial Assurance Regulation</u> <u>Comments: CERCLA 108(b) financial assurance rule for hardrock mining industry</u> <u>Letter: Concerns over potential EPA CERCLA 108(b) financial assurance requirements</u>
	Recognize state authority under the Clean Air Act. Ensure that newly promulgated rules are drafted and issued, where appropriate, in coordination with existing regulations, considering elements and requirements common to both. Provide states and local entities with adequate support and	<u>WGA Policy Resolution 2014-13: State Clean Air Act Authority and Air Quality Regulation</u> <u>Appropriations Requests Testimony, FY 2017</u> <u>Letter: Concern over pending revision to Exceptional Events Rule, given reduced ground-level ozone NAAQS</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>technical assistance to help them comply with regulations promulgated under the CAA.</p> <p>Collaborate with states to identify priority areas and focus on programs that provide the greatest benefit to air quality.</p> <p>Adhere closely to the timelines in the CAA.</p> <p>Recognize and account for unique circumstances of individual states. Avoid one-size-fits-all rulemakings (exceptional events and ozone example).</p> <p>Complete and publish timely guidance for state use in connection with implementation of the 2015 revised National Ambient Air Quality Standard for ground-level ozone.</p> <p>Avoid duplication of state programs. Permit states to create programs tailored to individual state needs, industries, and economies. Engage states as co-regulators (e.g. with respect to methane emissions).</p> <p>Provide those states with delegated authority timely implementation guidance when new and revised regulations are published.</p>	<p><u>Comments: Proposed reduction to ground-level ozone NAAQS</u></p> <p><u>WGA Policy Resolution 2015-02: Methane Emissions Regulation</u></p>
	<p>Expressly, unambiguously, and conspicuously recognize states' primary authority over water management and allocation decisions in all new federal laws, rules, regulations, and guidance documents.</p> <p>Any definition of "Waters of the United States" in the Clean Water Act must respect limits set by Congress and the U.S. Supreme</p>	<p><u>WGA Policy Resolution 2015-08: Water Resource Management in the West</u></p> <p><u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u></p> <p><u>Comments: Final Waters of the United States (WOTUS) Rule</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>Court, recognizing the authority of states to manage water within their boundaries.</p> <p>Recognize states' exclusive authority over the allocation and administration of rights to develop groundwater resources and expressly preclude federal agencies from usurping such authority through rulemakings, regulations, guidance documents, or agency directives.</p>	<p><u>Request for Extended Comment Period - Waters of the United States (WOTUS) Rule</u></p> <p><u>Letter: Request for Waters of the United States (WOTUS) Rule Comment Period Extension</u></p> <p><u>WGA Policy Resolution 2017-04: Water Quality in the West</u></p> <p><u>Appropriations Requests Testimony, FY 2016, 2017</u></p>
	<p>Engage the states as co-regulators and ensure that state water managers have a robust and meaningful voice in the development of any federal rule regarding CWA jurisdiction, particularly in the early stages of development and before any irreversible momentum precludes effective state participation.</p> <p>Allow states to adopt flexible water quality standards and establish total maximum daily loads (TMDLs) that are tailored to the specific characteristics of western water bodies, including variances for unique state and local conditions.</p> <p>Directly coordinate with states in establishing and, if necessary, modifying any water quality standards under Section 303 of the CWA; EPA should document the need for any new requirements and ensure they do not unduly interfere with sound existing practices.</p>	<p><u>WGA Policy Resolution 2017-04: Water Quality in the West</u></p> <p><u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u></p> <p><u>Comments: Final Waters of the United States (WOTUS) Rule</u></p> <p><u>Request for Extended Comment Period - Waters of the United States (WOTUS) Rule</u></p> <p><u>Letter: Request for Waters of the United States (WOTUS) Rule Comment Period Extension</u></p> <p><u>Letter: Concern regarding Clean Water Act jurisdiction rulemaking</u></p>
DEPARTMENT OF HOMELAND SECURITY		

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
Federal Emergency Management Agency (FEMA)		
	Work directly with individual states and territories to jointly identify their individual and common disaster risks and needs, and the best methods to determine the necessity and provision of federal disaster assistance.	<u>WGA Policy Resolution 2015-04: Federal Disaster Recovery Assistance for Communities in the West</u>
DEPARTMENT OF THE INTERIOR		
	Clarify definitions in key enabling statutes (such as FLMPA and NWRSA) to better define state-federal consultation.	<u>WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship</u>
Bureau of Land Management (BLM)		
	Enhance state-federal consultation regarding BLM's planning processes. Resource Management Plans (RMPs) should be developed and amended in coordination with Governors. These foundational documents should be developed with meaningful and substantial input from governors and state regulators before they are released for public comment. <ul style="list-style-type: none"> • Provide sufficient time for completion of Governors' Consistency Reviews; • Governors' Consistency Reviews should be applied to ensure consistency of RMPs with state policies, programs and processes – as well as various types of state plans (e.g. 	<u>WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship</u> <u>Letter: Governors concerned by final BLM Planning 2.0 Rule</u> <u>Testimony: BLM proposed rule, Resource Management Planning</u> <u>Testimony: BLM proposed rule, Resource Management Planning</u> <u>Comments: BLM proposed rule, Resource Management Planning</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>State Wildlife Action Plans) and multi-state agreements – in addition to officially adopted state land use plans;</p> <ul style="list-style-type: none"> • Maintain the existing appeals process (and associated timelines) for Governors' Consistency Reviews; and • Ensure that the standard for consistency in the resource management planning process matches the requirement of FLPMA 1712(c)(9). <p>Consult with states on a regular basis: as a predicate to federal action; through the pre-publication stage of rulemaking; after publication and before adoption of rules and regulations; and on an ongoing basis throughout implementation.</p> <p>Federal-state consultation should be substantive, take place on an early and ongoing basis, and involve both Governors and state regulators.</p> <p>Retain existing minimum public comment period timeframes. Any process that reduces BLM's responsibility to actively inform the public of its actions represents a retreat from openness and transparency.</p> <p>Retain existing requirements for publication of a Federal Register notice at the start of every planning effort. These publication requirements should also apply to Notices of Intent to prepare environmental assessments as part of RMP amendments.</p>	<p><u>Letter: Request for extension of comment period for BLM proposed rule, Resource Management Planning</u></p> <p><u>Letter: Request for clarification on aspect of BLM's Planning 2.0 Initiative</u></p>
	<p>Most Western states have a BLM office that coordinates and directs agency activity in that state. State directors need to be</p>	

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	given independent authority to respond to issues that are unique to individual states.	
	FLPMA requires BLM to establish a balance between multiple uses of public lands. Take steps to account for local needs and state priorities when evaluating the viability of various uses.	
	Use authorities in the 2014 Farm Bill (Good Neighbor Authority and Stewardship Contracting Authority) to increase the pace and scale of forest management and restoration on BLM lands.	<p><u>2016-01 National Forest and Rangeland Management Appropriations Requests Testimony, FY 2016, 2017</u></p> <p><u>Letter: Support for accelerated implementation of forest management projects</u></p>
	<p>Develop mitigation requirements and processes that may affect state and private land in cooperation with the Governors in whose states DOI lands are situated. Clearly define and predictably implement those requirements and processes so proper and reasonable mitigation can be incorporated in project planning.</p> <p>Revise BLM Mitigation Policy to better define key terms.</p>	<p><u>WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship</u></p> <p><u>Letter: Request for clarification on Secretarial Order 3330, Improving Mitigation Policies and Practices of the Department of the Interior</u></p> <p><u>Letter: Reiterating request for clarification on Secretarial Order 3330</u></p> <p><u>Letter: Governors request Interior establish preference for state-based mitigation programs</u></p>
	In any methane regulation, ensure that the capture, commoditization and sale of methane is promoted and that states remain empowered able to create programs tailored to individual state needs, industries, and economies.	<p><u>WGA Policy Resolution 2015-02: Methane Emissions Regulation</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
		<p><u>Comments: BLM should defer to state regulations for BLM proposed rule on methane reduction from oil and gas sector</u></p> <p><u>Letter: Request for extension of comment period for BLM proposed rule for methane reduction from oil and gas sector</u></p> <p><u>Letter: Urging state consultation on BLM's methane rule</u></p>
	Recognize that the states, territories, and flag islands have regulated the practice of hydraulic fracturing for decades and redundant federal regulation is not required where sufficient state regulations exist.	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Input on BLM proposed rule, Oil and Gas; Hydraulic Fracturing and Federal and Indian lands</u></p>
	<p>Improve state-federal coordination to complete the siting and permitting of electricity transmission across federal lands within three years of submission of a completed application.</p> <p>Include meaningful state consultation as a required component of the west-wide energy corridor designation process under section 368 of the Energy Policy Act of 2005.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p> <p><u>Letter: Support for Presidential Memo Transforming our Nation's Electric Grid through Improved Siting, Permitting and Review</u></p> <p><u>Letter: Support for the Senate's BLM Permit Processing Improvement Act of 2014</u></p> <p><u>Letter: Support for reauthorization of the Federal Permit Streamlining Pilot Project</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
		<p>Letter: Request for substantive partnership in Section 368 energy corridor designation process</p> <p>Letter: Offer to work with federal agencies on western energy Section 368 corridors</p>
	Provide states a forum to advise DOI on federal mineral leasing royalty policy (such as through reestablishment of the Royalty Policy Committee).	WGA Policy Resolution 2017-12: States' Share of Royalties and Leasing Revenues from Federal Lands and Minerals and States' Role in Associated Federal Policy
	Identify fuels management priorities in consultation with states to focus resources on greatest wildfire threats.	WGA Policy Resolution 2014-10 Regional Wildfire Fighting Resources
U.S. Fish and Wildlife Service (FWS)		
	Provide regulatory and statutory avenues to implement recommendations produced by the Western Governors' Species Conservation and ESA Initiative.	WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act
	Consult with Governors and state regulators to clarify landscape-scale compensatory mitigation and define "net conservation gain."	WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship
	Develop mitigation requirements and processes in cooperation with Governors in whose states DOI lands are situated. Clearly define and predictably implement those requirements and processes to ensure proper and reasonable mitigation is incorporated in project planning.	<p>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</p> <p>Comments: Endangered Species Act Compensatory Mitigation Policy</p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	Mitigation requirements having the potential to impact state and private land must be developed in coordination with Governors.	<p><u>Letter: Request for clarification on Secretarial Order 3330: Improving Mitigation Policies</u></p> <p><u>Letter: Request for clarification on Secretarial Order 3330: Improving Mitigation Policies and Practices of the Department of the Interior</u></p> <p><u>Letter: Reiterating request for clarification on Secretarial Order 3330</u></p> <p><u>Comments: Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy</u></p>
	Require petitioners to provide a copy of the petitions to affected state(s) so states may provide any existing state data regarding the petitioned species.	<p><u>WGA Policy Resolution 2016-08: Species Conservation and the Endangered Species Act</u></p> <p><u>Comments: Endangered & Threatened Wildlife and Plants: Revisions to the Regulations for Petitions</u></p>
	Incentivize voluntary conservation actions in order to preclude the need to list species under the ESA. Support the provision of economic incentives for landowners to participate in voluntary conservation efforts. Consult with Governors to promote proper implementation of FWS policy on Voluntary Prelisting Conservation Actions.	<p><u>WGA Policy Resolution 2016-08: Species Conservation and the Endangered Species Act</u></p> <p><u>Comments: Policy Regarding Voluntary Prelisting Conservation Actions</u></p>
	Limit critical habitat designations for broadly distributed species to only the area deemed necessary by the best available science. Use scientific information and analysis from states to inform critical habitat designations. Engage states as full partners in critical habitat designation, especially when federal agencies	<p><u>WGA Policy Resolution 2016-08: Species Conservation and the Endangered Species Act</u></p> <p><u>2016-08: Species Conservation and the Endangered Species Act.</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	intend to rely on the precautionary principle, coupled with the use of long-term modeling and forecasting.	
	The Services should utilize data and expertise provided by states in conducting status reviews and 12-month findings on petitions for listing species under the ESA.	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p><u>WGA Policy Resolution 2014-14, State Wildlife Science, Data and Analysis</u></p> <p><u>Comments: Use of State Data & Expertise in ESA Listing Methodology</u></p> <p><u>Testimony: State Wildlife Data</u></p> <p><u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u></p>



"Serving Western Legislatures"

The Council of State Governments West

1107 Ninth Street, Suite 730
Sacramento, CA 95814
PHONE (916) 553-4423
FAX (916) 446-5760
E-MAIL csgw@csg.org
www.csgwest.org

OFFICERS

Senator Nancy Todd
Colorado
Chair

Representative Jeff Thompson
Idaho
Chair-Elect

Representative Sam Hunt
Washington
Vice Chair

Representative Craig Johnson
Alaska
Immediate Past Chair

Edgar Ruiz
CSG West
Executive Director

COMMITTEE LEADERSHIP

Agriculture & Water
Senator Mary Hodge, CO
Senator Jim Honeyford, WA

CSG West Canada Relations
Representative Su Ryden, CO
MLA Douglas Horne, BC

Transportation & Economic Development
Representative Judy Clibborn, WA
Senator Scott Hammond, NV

Education & Workforce Development
Representative Wendy Horman, ID
Senator William Soules, NM

Energy & Environment
Senator Michael Von Flatern, WY
Senator Michelle Stennett, ID

Finance
Representative Brad Dee, UT
Senator Ricardo Lara, CA

Public Safety
Senate President Wayne Niederhauser, UT
Representative Kimberly Dudik, MT

Health & Human Services
Senator Elizabeth Steiner Hayward, OR
Senator Kelli Ward, AZ

State & Federal Relations
Representative Lance Pruitt, AK
Representative Cindy Evans, HI

Legislative Service Directors
Charlotte Carter-Yamauchi, HI
Mark Quiner, WY

May 19, 2015

Honorable Mike Rounds
United States Senator
Chairman, Superfund, Waste Management, and Regulatory Oversight
Subcommittee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Honorable Edward Markey
United States Senator
Ranking Member, Superfund, Waste Management, and Regulatory
Oversight Subcommittee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senator Rounds and Senator Markey,

On behalf of the Council of State Governments West (CSG West), thank you for the opportunity to contribute to the Superfund, Waste Management, and Regulatory Oversight Subcommittee's hearing on oversight of scientific advisory panels and processes at the Environmental Protection Agency (EPA). We appreciate your leadership and the subcommittee's interest in hearing from Western state legislators.

As a nonpartisan, nonprofit organization serving Western state legislatures, CSG West is dedicated to preserving the role of states as "laboratories of democracy" and fostering effective cooperation with relevant federal agencies in areas of shared jurisdiction while limiting unnecessary federal intrusion in areas of state responsibility. In no other region in our country is effective federal and state cooperation more important than in the West where federal agencies work with relevant state and local agencies on a number of critical issues affecting the sustainability of our region, including the management of our natural resources and the protection of wildlife.

Over the past several years CSG West, through resolutions and correspondence, has urged Congress and federal agencies to communicate and consult with Western states in a substantive and timely manner when considering amendments to the Water Pollution Control Act as well as other federal laws. Moreover, CSG West has urged federal agencies to adhere to Presidential Executive Order 13132, issued August 4, 1999, requiring federal agencies to "have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications."

Enclosed for your reference are copies of CSG West resolutions related to proposed amendments to the Federal Water Pollution Control Act and water-related federal rules, regulations, directives, orders and policies.

Despite our organization's call for greater consultation with Western states, communication challenges remain. In many instances state consultation by federal agencies, including U.S. EPA, has taken place in the latter part of the policy development process, placing states and regional organizations such as CSG West in a reactionary position to a proposed regulation or interpretation as opposed to engaging states on the front-end of the process to ensure that state perspectives are taken into account.

In addition to the state consultation challenges limited state representation exists in EPA advisory panels. U.S. EPA advisory panels play an important role in providing independent advice to the EPA Administrator and other high level administration officials on a number of technical issues, including the development of rules related to the jurisdiction and application of the Clean Water Act, Clean Air Act and other regulations that impact state authority. Because they provide an independent voice to complex, technical matters, it is imperative that such advisory boards be comprised by a wide array of stakeholders, including state level representatives. However, states are largely underrepresented in EPA advisory panels.

Below are some examples related to the lack of state/local participation on EPA advisory panels:

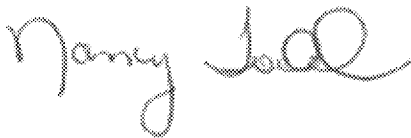
- Of the 47 members of EPA's Chartered Science Advisory Board, only three are from state and local governments.
- EPA's Hydraulic Fracturing Research Advisory Panel, a subpanel of the Science Advisory Board designed to review EPA science on hydraulic fracturing and water, has no state/local/tribal experts on the panel. Thirteen state/local/tribal experts were nominated including from Western states and local governments, but none were selected by EPA.
- For the Science Advisory Board "Connectivity" Panel, which was reviewing a highly influential scientific assessment designed to inform EPA's authority over "waters of the U.S." under the Clean Water Act, EPA did not pick any of the nine qualified state/local experts the 27-member panel. As the Western Governors' Association recently testified: "It is worth noting that the SAB panel for the review of the EPA water body connectivity report included no state representatives. The report was therefore developed without the regulatory expertise, scientific resources and on-the-ground knowledge possessed by state professionals."
- For EPA's Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy's proposed ozone regulations, only one of the 22 panelists came from a state/local perspective.

- For EPA's seven-member chartered Clean Air Scientific Advisory Committee, whose recommendations establish the range to be considered by EPA in setting national air pollution standards, not a single member has come from EPA Region 6 (AR, LA, NM, OK, TX), Region 7 (IA, KS, MO, NE), Region 8 (CO, MT, ND, SD, UT, WY), or Region 10 (AK, ID, OR, WA) since at least 2010.

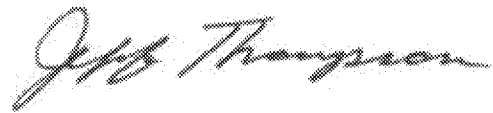
CSG West recognizes that the federal government has a vital role to play in advancing national priorities. However, it is imperative that federal agencies substantially engage states when developing or enacting regulations which affect state jurisdictions, and ensure that advisory panels designed to provide an independent voice include greater state representation. We encourage you and the members of the subcommittee to address these challenges with the hope that our state and federal engagement can be strengthened for the benefit our states and communities.

Once again, thank you for your consideration of these important issues. If you or your staff has any questions, please feel free to contact CSG West Executive Director, Edgar Ruiz, at (916) 553-4423.

Sincerely,



Senator Nancy Todd
Chair, CSG West
Colorado State Senate



Representative Jeff Thompson
Chair-Elect, CSG West
Idaho House of Representatives



Representative Sam Hunt
Vice Chair, CSG West
Washington House of Representatives



Representative Craig Johnson
Immediate Past Chair, CSG West
Alaska House of Representatives



Representative Lance Pruitt
Chair, CSG West State &
Federal Relations Committee
Alaska House of Representatives



Representative Cindy Evans
Vice Chair, CSG West State &
Federal Relations Committee
Hawaii House of Representatives

00631

CC:

Senator James M. Inhofe (OK), Chairman, U.S. Senate Committee on Environment & Public Works

Senator Barbara Boxer (CA), Ranking Member, U.S. Senate Committee on Environment & Public Works

Enclosures

- CSG West Resolution 2014-03 on water-related federal rules, regulations, directives, orders and policies.
- CSG West Resolution 2011-03 regarding U.S. EPA and the U.S. Army Corp of Engineers' draft guidance on identifying waters protected by the Clean Water Act.
- CSG West Resolution 2010-01 regarding amendments to the Federal Water Pollution Control Act, as proposed by S. 787 and H.R. 5088 in the 111th Congress.

Home » Homepage » CRS Joins Congressional Calls for Transparency at EPA: Submits FOIA Request for Records on CASAC's Member Selection Process

CRS Joins Congressional Calls for Transparency at EPA: Submits FOIA Request for Records on CASAC's Member Selection Process

04/13/2018

CRS stresses need for balanced panel that includes western representation

Washington D.C. – Joining congressional calls for transparency at EPA, the Center for Regulatory Solutions (CRS), a project of the Small Business and Entrepreneurship Council, today filed a Freedom of Information Act (FOIA) request for public records and communications regarding the process for selecting new members to the Clean Air Science Advisory Committee (CASAC) and its Ozone Review Panel. The Administrator of the Environmental Protection Agency (EPA) annually reviews CASAC membership, appointing new members on a rotating basis. In turn, CASAC advises EPA on their National Ambient Air Quality Standards (NAAQS) for ozone and other pollutants.

On April 4, 2018, the EPA initiated the 2018 CASAC nominating process, quietly posting a notice in the Federal Register soliciting nominations for new members. However, little is known about how EPA makes its ultimate decisions for membership, and the time allotted for public comment is only 30 days. Even so, Congressional leaders, the EPA Inspector General and the Governmental Accountability Office (GAO), have all raised concerns about conflicts of interest and the lack of transparency in previous nomination and selection processes. For example, in 2015, public comments on the "short-list" of candidates were never made publically available and the EPA Administrator's final decision was not publically noticed.

"CASAC has immense influence and input on EPA's decisions regarding air quality standards, like Ozone NAAQS. As such, EPA has an obligation to ensure that the process of selecting new members is open and transparent and that the panel is balanced and unbiased. Unfortunately, the EPA historically fails in this regard, causing many to question the integrity of the panel," said Karen Kerrigan, President of the Small Business and Entrepreneurship Council. "We're filing this FOIA request to shine a light on the process, as EPA begins to consider a new candidate for the Committee. Moreover, I am urging EPA to consider naming a Western air regulator to the panel, since EPA has so far proved incapable of grappling with the complications associated with background ozone, which disproportionately impacts Western states."

It is important to pull back the curtain and allow the public to understand EPA's selection process, especially in light of the CASAC status as a Federal Advisory Committee, which is governed by Federal Advisory Committee Acts (FACA) requirements of balance and transparency. According to its charter, CASAC's membership must include a physician, a member of the National Academy of Sciences (NAS), and a representative from a state pollution control agencies. These individuals should be free of conflict-of-interest and not hold preconceived views on the science. Yet the current panel does not include a member of NAS and the state representative is from the Northeast States for Coordinated Air Use Management (NESCAC), which actively lobbies for stricter ozone standards. There is sparse representation from Western states on the Committee, even though they face higher implementation burdens due to the role of background ozone.

In February 2016, Senator James Inhofe (R-OK), Chairman of the Senate Environment and Public Works Committee, sent a letter to the EPA charging that the Administration is "cherry-picking the same allies" to serve on the Committee and its subcommittees "at the expense of having an open and robust process for selecting external advisors." The letter notes that six of the seven current members have previously served on CASAC, or CASAC subcommittees. Inhofe also called on the EPA to address potential conflicts-of-interest of CASAC members, revealing that CASAC members have received millions of dollars in EPA grant funding. The House Science Committee, led by Chairman Lamar Smith (R-TX) has found that the vast majority of appointees to CASAC's Ozone Review Panel were essentially reviewing their own work. In a letter sent this week to the EPA, leaders of the House Oversight and Government Committee asked the agency to produce financial disclosure forms of CASAC members in order to "understand the reliability of EPA's conflicts assessment."

While the public knows very little about CASAC and its membership, it is the main driver for pushing the ozone NAAQS steadily downward, consistently advocating for EPA to lower the standard to 60 parts per billion (ppb) – a level that would be the most expensive regulation in history.

00633

and force the majority of the country into non-attainment. Many areas in the U.S. have background ozone levels higher than 60 ppb, and as such CASAC's preferred standard would not be achievable for much of the country. Such an outcome would be devastating for America's small business owners, their workforce and communities, all would be unfairly penalized by the decision. While the EPA thus far has declined to follow the Committee's extreme advice, the members selected to serve on CASAC will start the process again and define the terms of the debate for the next review of the ozone standard.

CRS' FOIA seeks the following records from EPA:

1. All documents referring or relating to the 2015 CASAC selection process, which includes, but is not limited to the following categories of documents:
 1. All comments submitted to EPA pursuant to its April 2, 2015 request for nominations to CASAC.
 2. All communications referring or relating to the CASAC selection process between EPA's SAB and the Office of the Administrator, the Office of Air and Radiation EPA, and the Office of General Counsel.
 3. All communications between each candidate for CASAC membership and the Office of the Administrator, the Office of Air and Radiation EPA, and the EPA's SAB staff.
 4. All communications referring or relating to Administrator McCarthy's final CASAC selection between and among any of the following offices: EPA's Office of the Administrator, Office of the Air and Radiation, and/ or the Office of General Counsel.
 5. All press releases or public announcements and notifications related to the CASAC selection process.
2. All documents referring or relating to the upcoming Ozone Review Panel selection, which includes, but is not limited to the following categories of documents:
 1. Correspondence between any candidate for the ORP and the SAB.
 2. Discussion between an EPA employee and an outside party relating to ORP panel membership.
 3. All communications referring or relating to the ORP between EPA's SAB and the Office of the Administrator, the Office of Air and Radiation EPA, and the Office of General Counsel.
 4. All communications between each candidate for the ORP and the Office of the Administrator, the Office of Air and Radiation EPA, and the EPA's SAB staff.

About CRS

The Center for Regulatory Solutions is a project of the Small Business and Entrepreneurship Council, a 501(c)(4) advocacy, research, education and networking organization dedicated to protecting small business and promoting entrepreneurship. For twenty-three years, SBE Council has worked to educate elected officials, policymakers, business leaders and the public about policies that enable business start-up and growth.

###

Share this:



© 2018 The Center for Regulatory Solutions

00634

Home » homepage » Congressional Oversight Committee Chairs and Air Regulators Call for Balance on CASAC

Congressional Oversight Committee Chairs and Air Regulators Call for Balance on CASAC

07/23/2016

By Karen Kerrigan

Congressional leaders and air quality regulators are calling on the Environmental Protection Agency (EPA) to bring regional diversity to the Clean Air Scientific Advisory Committee (CASAC) in a trio of letters to the agency. The letters, from the chair of the U.S. Senate Committee on Environment and Public Works (EPW), the chair of the House Committee on Oversight and Government Reform (OGR) and another from an influential state air regulators group, the Association of Air Pollution Control Agencies (AAPCA) raise issues with the current makeup of CASAC in their calls for increasing balance on the committee.

The letters come as EPA seeks input to make a new appointment to the committee that is tasked with providing advice, information, and recommendations on the scientific and technical aspects of air quality for ozone and other pollutants.

The nomination is particularly significant with EPA preparing to implement its new National Ambient Air Quality Standards (NAAQS) for Ozone, adopted last October. The rule has drawn widespread bipartisan opposition from federal, state, and local elected officials, editorial boards, business groups, and others who warn that the costs of the rule far outweigh any apparent benefits of dropping permissible ozone concentrations in ambient air from 75 parts per billion (ppb) to 70 ppb.

Congressional Leaders Want Balance on CASAC

In a letter to EPA, Sen. James Inhofe, (R-OK), chairman of Senate EPW, is calling for the agency to select a candidate from the current list of nominees that would bring "much needed balance and integrity to CASAC." Raising his "concerns with two of the nominees under consideration," Inhofe writes that "there is no reason for EPA to overlook well-qualified candidates" from areas "that would clearly balance the panel." From the letter:

This seeming geographic bias on the chartered CASAC cannot be ignored. It is also important to note that with respect to this specific state-based position on CASAC, there has been no meaningful geographic diversity at all.

This is not the first time the chairman has raised issues with CASAC. In February 2016, he admonished EPA for "cherry picking the same allies" to serve on its committees "at the expense of having an open and robust process for selecting external advisors."

Meanwhile, similar concerns are being raised in a letter to EPA from Congressman Bruce Westerman (R-AR), Jason Chaffetz (R-UT) and others, who are calling for EPA to nominate a candidate from a region not currently represented on CASAC. Also from the letter:

When considering nominees, it is vitally important that different EPA Regions are represented to ensure a fair balance of experts and experience. EPA specifically acknowledges in the notice that geographic diversity is an important selection criteria. Currently, no CASAC members come from Region 8 (MT, WY, ND, SD, UT, CO), Region 6 (NM, TX, OK, AR, LA), Region 7 (NE, KS, IA, MO), or Region 4 (KY, TN, MS, AL, FL, GA, SC, NC). Additionally, not a single CASAC member has come from Regions 6, 7, or 8 since 2010. Accordingly, in order for balance, fairness and geographic diversity on CASAC, we request that EPA fill the open position with someone from an area not represented on the Committee.

The pair of Congressional letters is the latest development in what is becoming a growing list of CASAC critics. Congressional leaders, the EPA Inspector General and the Governmental Accountability Office (GAO), have all raised concerns about conflicts of interest and the lack of

00635

transparency in previous nomination and selection processes for the committee. For example, in 2015, public comments on the "short-list" of candidates were never made public.

But members of Congress are not the only ones calling for more balance on CASAC. The Association of Air Pollution Control Agencies (AAPCA) has also recently called on EPA to expand diversity on the committee. In a letter to EPA, the group writes:

"AAPCA also suggests that EPA should encourage nominations of, and seriously consider, qualified state, local, and tribal environmental agency experts for future openings on the chartered CASAC (including for those openings not statutorily required to be filled by a representative of state air pollution control agencies) as well as individual CASAC NAAQS review panels."

The regulatory burden of EPA's new ozone standard has come under intense scrutiny from business groups, editorial boards, and elected officials on both sides of the aisle who are calling on the agency to put the brakes on the new ozone rule. This blanket approach to ozone is exactly why the members of CASAC should represent the greatest geographic diversity available. Communities struggling with the new ozone standard deserve a voice that can speak to the specific and unique issues communities across the country will face in implementing this new standard.

Karen Kerrigan is president & CEO of the Small Business & Entrepreneurship Council (SBE Council). The Center for Regulatory Solutions is a project of the Council.

Share this:

    in

© 2018 The Center for Regulatory Solutions



American
Fuel & Petrochemical
Manufacturers

1667 K Street, NW
Suite 700
Washington, DC
20006

202.457.0480 office
202.457.0486 fax
afpm.org

May 15, 2017

Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

Attention: Docket ID Number EPA-HQ-OA-2017-0190

Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: U.S. Environmental Protection Agency's Request for Comment, "Evaluation of Existing Regulations"

Dear Ms. Rees:

The American Fuel & Petrochemical Manufacturers (AFPM) respectfully submits these comments in response to the Environmental Protection Agency's (EPA or Agency) Request for Comment, titled "Evaluation of Existing Regulations."¹ AFPM recognizes this information will assist EPA's Regulatory Reform Task Force (Task Force) in evaluating existing regulations to alleviate unnecessary regulatory burdens, as directed by Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (EO 13777).²

AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. Millions of Americans use products produced by AFPM members every day. Our members serve the American people responsibly and effectively by manufacturing virtually all U.S. petroleum fuels and petrochemicals, strengthening economic and national security, and providing jobs directly and indirectly for over four million people.

While domestic fuel and petrochemical manufacturers have invested and will continue to invest substantial capital in environmental protection, AFPM member companies face regulatory obstacles that can undermine the ability of petrochemical manufacturers and refiners to create jobs and compete in the global economy. It is a truism that our modern lifestyle is inextricably linked to the fuels and petrochemicals AFPM members produce. AFPM supports clear and reasonable regulations that are science and data driven, create a level playing field upon which to compete, and have benefits that exceed the regulation's costs. That said, the U.S. regulatory burden, if left

¹ "Evaluation of Existing Regulations, 82 *Fed. Reg.* 17,793 (April 13, 2017).

² "Presidential Executive Order on Enforcing the Regulatory Reform Agenda," February 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

unchecked, creates an economic incentive to produce these essential products outside the country, threatening well-paying jobs, tax revenues, and the security of the nation.

The market policy and infrastructure factors affecting the American fuel supply have created a high-cost environment that hampers our nation's economy and threatens our critical refining infrastructure. Unfortunately, government regulation has the ability to make matters even worse. Proposed new regulations and unnecessary tightening of existing standards threaten to raise energy costs for every American consumer, with little or no environmental benefit.

AFPM supports sensible regulations as important tools to protect our well-being by providing rules for all businesses to live by. Too often, however, the U.S. regulatory regime is opaque, duplicative, or outright conflicting—creating uncertainty for businesses, shuttering good projects, and ultimately harming consumers. There are common sense regulatory reform measures that will promote transparency, good government, and sound science without compromising the environment, health, or safety. Far from undermining sensible regulation, such reforms would allow regulated entities to deliver better results for less cost.

These comments highlight EPA regulations AFPM believes are most burdensome for our members and their business operations. We have included recommendations to either eliminate some of these requirements or modify them as appropriate. To facilitate EPA's review, we have divided these comments into three broad categories: 1) Stationary Sources; 2) Fuels; and 3) Toxic Substance Control Act (TSCA) and Lautenberg Chemical Safety Act (LCSA) Implementation.

A. Stationary Sources

The following are the five stationary source regulations of greatest concern to AFPM members:

1. Risk Management Plan (RMP) – 40 CFR Part 68

In August 2013, following the explosion of the fertilizer plant in West, Texas, President Obama issued Executive Order (EO) 13650, entitled "Improving Chemical Facility Safety and Security." The EO directs the federal government to improve operational coordination with state and local partners, improve federal agency coordination and information sharing, modernize policies, regulations and standards, and work with stakeholders to identify best practices in chemical facility safety and security. The Department of Homeland Security (DHS), Occupational Safety and Health Administration (OSHA) and EPA were to work in conjunction to achieve these objectives. Using this EO as justification, EPA proposed significant modifications to the existing RMP regulations. On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms and Explosives said that the West, Texas facility fire had been deliberately set. Because the incident was caused intentionally, the recently-promulgated RMP revisions would not have prevented the incident.

AFPM members have significant concerns surrounding the new requirements to compel disclosure of potentially security-sensitive information to emergency responders and the public, perform inherently safer technology assessments and third-party audits, and eliminate the use of representative sampling when performing a compliance audit. Particularly, sharing security-sensitive information is adverse to DHS's mission to protect our nation's security.

EPA's RMP revisions relied on an erroneous cost-benefit analysis. Some of the revisions compromise safety by limiting the ability of companies to hire qualified auditors and diverting resources to inherently safer technology analysis that provides little safety benefit when conducted after a facility is already built. Furthermore, EPA did not respect the jurisdictional lines between itself and OSHA on these issues, as OSHA has primary jurisdiction over the "inside the fence line" requirements that EPA relied on to justify its cost-benefit calculations.

As such, AFPM and five other industry associations filed a petition for reconsideration with EPA and a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. The coalition is challenging aspects of the rule that compromise security and fail to enhance safety. The petition urges EPA to seek further public comment on various issues surrounding the rule, such as investigators' finding that arson caused the fire that served as the foundation of EO 13650 and the subsequent RMP revisions. In addition, the petition asks EPA to seek feedback on changes in the final rule that expanded provisions for disclosure of facility data and the scope of auditing requirements, as well as whether the rule's independent audit and safer technologies analysis provisions are justified. In response to the petition, EPA agreed to delay the rule's effective date from March 21 to June 19 in order to reconsider the regulation, and has proposed to further delay the effective date until February 19, 2019.

Moreover, the RMP rules significantly overlap with and are redundant to the OSHA Process Safety Management Rules in 29 C.F.R. §1910.119. This overlap/redundancy can lead to duplicative and inconsistent regulations. It can also lead to differing interpretations between OSHA and EPA. AFPM members believe this is an area that is especially ripe for reform and revision.

Recommendation

EPA should withdraw the revisions to the RMP rules and allow OSHA to take the lead on process safety management.

2. Ozone NAAQS – 40 CFR Part 50; 40 CFR Part 58

Under the Clean Air Act, EPA must review national ambient air quality standards (NAAQS) for criteria pollutants at least every five years and revise them "as may be appropriate." Primary NAAQS must be set at a level "requisite to protect the public health" with "an adequate margin of safety." Secondary NAAQS must specify a level of air quality "requisite to protect the public welfare from any known or anticipated adverse effects." In a final rule published in the Federal Register on October 26, 2015, EPA lowered the primary and secondary ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.³

On December 23, 2015, AFPM and numerous other entities filed petitions for review in the U.S. Court of Appeals for the D.C. Circuit. EPA petitioned the court to postpone oral argument and the Court placed the case in abeyance. EPA is to file status reports and a motion to govern further proceedings after EPA takes action on the 2015 standard. AFPM's primary concern with EPA's rule is the attainability of the standard. AFPM continues to advocate for a legislative solution on

³ "National Ambient Air Quality Standards for Ozone," 80 *Fed. Reg.* 65,292 (Oct. 26, 2015).

ozone that would provide meaningful relief for companies faced with more stringent permitting requirements and regulations as a result of the new standard, but the Administration should also consider what avenues may exist for regulatory relief, including with respect to associated implementation rules, such as the Exceptional Events Rule.⁴

EPA's decision to lower the ozone standard from 75 parts ppb to 70 ppb will force many counties across the United States into non-attainment with the ozone NAAQS, increasing the burden on state and local governments and industry. Nonattainment areas are subject to numerous Clean Air Act requirements, including the submittal of state plans to bring an area into attainment, application of reasonably available control technology ("RACT") requirements, permit requirements for the construction and operation of new or modified major sources and other measures that a state or EPA may determine are necessary or appropriate in order to bring an area into attainment. *See* 42 U.S.C. § 7502. These requirements can both inhibit the ability of industry already located in a nonattainment area to expand as well as raise costs and act as a disincentive for new industry to locate in a nonattainment area.

During the 2015 ozone NAAQS rulemaking, EPA identified 241 counties that would not meet the 70 ppb ozone standard based on 2012-2014 data.⁵ But under EPA's current ozone designation process, nonattainment areas are not limited to counties that have measured air quality above a NAAQS; instead, EPA stated that "it is important to examine ozone-contributing emissions across a relatively broad geographic area associated with a monitored violation . . . EPA intends to consider information relevant to designations associated with the counties in the Combined Statistical Area (CSA), or where appropriate, the Core Based Statistical Area (CBSA) in which the violating monitor is located."⁶ If this process is followed, new nonattainment areas will need to be established for the 70 ppb standard and existing nonattainment areas must be reevaluated to determine whether they should be expanded under a "weight of the evidence analysis" based on the evaluation of air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.⁷

Conversely, however, EPA has also projected that a combination of on-the-books federal regulations and implementation of the existing 75 ppb ozone standard would achieve air quality meeting or exceeding a 70 ppb standard across virtually the entire country outside of California by 2025. Thus, EPA has been proceeding apace with the designation process for the 2015 ozone NAAQS – planned for 2017 – while it also has information indicating that further burdening state and local governments with new ozone designations and re-designations of existing nonattainment areas will occur when air quality in most of the country is moving towards attainment of the 2015 NAAQS.

AFPM recognizes that the five-year cycle is part of the statutory design of the Clean Air Act and that other implementation measures are based in statute. But the Administration can ease the burden on states and businesses by further considering how improving air quality can be accounted for considered during the implementation process for the 2015 ozone NAAQS.

⁴ "Treatment of Data Influenced by Exceptional Events," 81 *Fed. Reg.* 68,216 (Oct. 3, 2016).

⁵ "2015 Ozone Standards," https://ozoneairqualitystandards.epa.gov/OAR_OAQPS/OzoneSliderApp/index.html#.

⁶ "Area Designations for the 2015 Ozone National Ambient Air Quality Standards," Memorandum from Janet McCabe to EPA Regional Administrators, February 25, 2016 at 5.

⁷ *Id.* at 6.

For example, EPA has previously implemented policies like Early Action Compacts designed to both achieve air quality standards and avoid imposing the burdens that flow from nonattainment designations. This process used a “nonattainment deferred” status for areas, dependent upon the achievement of certain milestones. Thus, EPA should fully explore whatever additional flexibility it may possess to implement NAAQS in a reasonable manner which recognizes the cumulative impact of finalizing more stringent NAAQS in 1997, 2008 and 2015, the overall downward trend in ozone concentrations,⁸ and improvements in air quality that can be projected in future years. Such an approach will allow state resources to be allocated more effectively and reduce resulting economic hardship, while still achieving intended air quality improvements.

EPA should also review rules and guidance that the previous Administration relied on when it promulgated the 2015 ozone NAAQS. Specifically, EPA should review rules and guidance for “exceptional events” which rely on authority within Clean Air Act §319(b), the Agency’s interpretation of international transport provision contained in Clean Air Act §179B, and the available classification of an area as a “rural transport area” pursuant to Clean Air Act §182. AFPM previously filed detailed comments regarding all three provisions as part of the comments it filed on the proposed 2015 ozone NAAQS.⁹ Among other recommendations, AFPM urged EPA to allow for greater state flexibility in “flagging” and excluding exceptional event data, clarify that relief under the international transport provisions is available to non-border states and that such relief is intended to be widely available on a consistent basis, and that EPA should take additional steps to issue workable regulations or guidance for use of the rural transport area designation.

Regarding EPA’s recent rulemaking and guidance for Exceptional Events, the information lacks objective, science-based criteria for approving a demonstration. For example, the guidance document discusses “Q/D” (fire emissions divided by the distance from the fire) for wildfire-related ozone events. However, Q/D appears inconsistent with peer reviewed scientific analyses that clearly demonstrate that for most wildfire plumes, ozone concentrations increase with distance from the fire (Jaffe and Wigder 2012). Another inconsistency with EPA’s exceptional event guidance lies in the discussion of the possible use of statistical analyses to quantify the ozone increment related to exceptional events. In the guidance, EPA requires an overly conservative methodology that is inconsistent with EPA’s prior approval of an ozone exceptional event that used a similar statistical analysis but not by the overly conservative methodology described by EPA in the guidance. This guidance states “The difference between the predicted values and the measured values are analyzed, and the 95th percentile of those positive differences (observed [ozone (“O3”)] is greater than predicted) is recorded. This 95 percent error bound is added to the O3 value predicted by the regression equation for the flagged days, and any difference between this sum and the observed O3 for the flagged day may be considered an estimate of the O3 contribution from the fire...” [Emphasis added] The 95th percentile of positive values is equivalent to the 97.5th percentile of all values. The California Air Resources Board applied this statistical method in a successful exceptional events case demonstration for 2008 California wildfires (CARB 2011), and EPA cited this element in its approval documentation (April 13,

⁸ National ozone levels (as measured over 8 hours) have decreased 22% since 1990. See <https://gispub.epa.gov/air/trendsreport/2016>.

⁹ American Fuel & Petrochemical Manufacturers’ Comments on the Environmental Protection Agency’s Proposed Rulemaking: National Ambient Air Quality Standards for Ozone (Docket No. EPA-HQ-OAR-2008-0699-2114.), March 17, 2015 at 25-34.

2011). However, the CARB analysis did not apply the stringent error bound requirements of considering only the positive differences, but was accepted in any case.

AFPM calls upon EPA to take immediate steps to increase the transparency of data EPA relies on for NAAQS rulemakings. EPA should ensure that all scientific and technical information that the Agency relies on to determine the level of a NAAQS is publicly available to ensure opportunities for independent analysis of the data. In addition, EPA should reform the Clean Air Scientific Advisory Committee (CASAC) and increase the diversity of CASAC membership to include qualified professionals in regulated industries.

Recommendations

EPA should:

- Support a more flexible implementation of non-attainment designations for the 2015 ozone NAAQS to allow for full implementation of the 2008 ozone NAAQS as well as for implementation of other federal and state rules that will reduce ozone formation.
- Empanel CASAC with diverse membership to include qualified professionals within industry, consulting, and state environmental agency backgrounds.
- Revise and reissue the exceptional events rule and guidance, taking into account comments related to science-based information about fire-related events and objective approval criteria that clarify what constitutes an adequate demonstration.

3. Refinery Sector Rule (RSR) – 40 CFR Part 60, Subparts J and Ja; 40 CFR Part 63, Subparts CC and UUU

Under the Clean Air Act, EPA is required to regulate hazardous air pollutants (HAPs) from “major” sources (i.e., those that emit 10 tons per year (tpy) or more of a listed HAP, or 25 tpy or more of a combination of HAPs). EPA must develop standards for HAPs based on the maximum achievable control technology (MACT) used at the best-controlled facilities within an industry. The petroleum refining and petrochemical industries are subject to a number of MACT standards. EPA also must develop and implement a program for assessing risks remaining after facilities implement MACT standards (i.e., residual risk), and may issue regulations to reduce residual risks to protect the public health with an “ample margin of safety.” The residual risk provisions require EPA to consider costs, energy, safety and other relevant factors as it regulates to prevent “adverse environmental effects.” If necessary, EPA must issue risk-based regulations within eight years after the promulgation of the MACT standard.

Beginning in 2006, EPA conducted a thorough residual risk review that concluded that the existing 40 CFR 63 Subpart CC and UUU standards for petroleum refineries did not have residual risks requiring further rules. This was finalized in a rule signed by EPA on January 16, 2009. However, the final rule was withheld from publication at the request of the Obama Administration and withdrawn in 2009.”

After withdrawing the completed refinery residual risk rule in 2009, EPA began a second residual risk analysis and finalized the Refinery Sector Rule on December 1, 2015,¹⁰ and subsequently clarified the compliance dates in a second final rule published on July 13, 2016.¹¹ AFPM supported EPA's process to evaluate the residual risk remaining after full implementation of the refinery MACT rules. As demonstrated by EPA's analysis for this rule, refinery emissions do not pose a significant residual risk to the public. But despite this fact, EPA included significant new compliance requirements in the December 2015 rule. AFPM does not believe that the additional regulation of these sources is authorized under the Clean Air Act because EPA concluded that the risks were acceptable. Further, much of the rulemaking eliminated various allowances for emissions during startups, shutdowns, and malfunctions as a result of EPA's overly broad interpretation of *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008).

Furthermore, in setting new standards for controlling flare emissions, EPA erroneously went far beyond the MACT "floor" of the best 12 percent controlled flares, in requiring flare compliance for several parameters based on a 15-minute block average compliance period, an example of EPA over-reaching its Congressional mandate to set the MACT floor based on the best performing 12 percent. The 15-minute block average compliance period does not represent the best 12 percent of flares. We are unaware of any flares controlled to a 15-minute block average compliance period prior to this rulemaking. Even the flares subject to Consent Decrees were required to comply on a rolling 3-hour basis prior to this rulemaking. We provided comments to EPA in support of a rolling 3-hour compliance period and against the 15-minute block average compliance period, but EPA finalized the rule with the 15-minute block average compliance period.

In response, AFPM and the American Petroleum Institute (API) filed a joint petition for review in the D.C. Circuit and administrative petitions for reconsideration of EPA's refinery sector residual risk rule as a number of issues need to be clarified. A collection of environmental groups also filed petitions for review and reconsideration, seeking to tighten EPA's emissions standards for flares and pressure relief devices. The lawsuit has been placed in abeyance while EPA considers the pending petitions for reconsideration.

On June 16, 2016, EPA granted the environmental groups' petitions for reconsideration and requested comment on the following aspects of the final rule: 1) work practice standards for pressure relief devices and emergency flaring events, including the assessment of risk from the implementation of these standards; 2) alternative work practice standards for delayed coking units employing a water overflow design; and 3) the provision allowing refineries to reduce the frequency of fence-line monitoring at sampling stations that consistently record benzene concentrations below 0.9 micrograms per cubic meter. While these issues go beyond those raised by AFPM and API in their petitions for reconsideration, the letter granting reconsideration stated that EPA may grant reconsideration of additional issues in the future. AFPM and API submitted comments opposing the environmental groups' petition and are awaiting a decision. EPA has also not yet made a determination on the AFPM/API petition for reconsideration.

¹⁰ "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards," 80 *Fed. Reg.* 75,178 (Dec. 1, 2015).

¹¹ "National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector Amendments," 81 *Fed. Reg.* 45,232 (July 13, 2016).

Recommendations

EPA should:

- Reject the environmental groups' petitions for reconsideration and retain the challenged provisions. In addition, since compliance deadlines are approaching in 2018, EPA needs to take action on the AFPM/API petition in order to ensure regulatory certainty;
- Revise the flare compliance requirements to replace all 15-minute block average compliance periods with a rolling 3-hour compliance period. EPA should make this change quickly to alleviate the need for compliance planning and expenditures related to the shorter compliance period currently in the rule; and
- Eliminate the fence line monitoring provisions as EPA has found insufficient risk to justify their inclusion.

4. Recommendations for Revising New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

In 2002, EPA promulgated a package of NSR reform regulations. These regulations contained provisions that changed the test for measuring whether a significant net emissions increase occurred (allowing use of “projected actual emissions”) and allowing for a longer baseline period in order to determine past emissions and therefore whether an emissions increase triggering NSR had occurred. The 2002 NSR reform package also contained other provisions providing for plantwide applicability limits (PALs) which included a simplified “facility-wide actuals” emission test under which PSD/nonattainment new source review (NNSR) permitting would not be triggered if the facility-wide actual emissions for a given pollutant did not increase above the PAL.

In the years since this effort, EPA has offered small “fixes” for grandfathering facilities when NAAQS are lowered and other implementation rules and guidance have been proposed or finalized designed to reduce NSR analysis and permitting burdens. But the time has come for a more comprehensive review of the NSR program and exploration of legislative and regulatory changes to the program.

Recommendation

The Administration should consider the following modifications to the permitting process, including revisions to the PSD/NNSR program:

- Eliminate the need to consider emissions increases from non-modified affected emission units;
- Allow project netting so that emissions reductions associated with a project can be considered in Step 1 of the PSD/NNSR applicability analysis;
- Use a “potential to potential” comparison of emissions to determine whether PSD/NNSR is triggered; and/or
- Provide a definition of “project” to address uncertainty around project aggregation.

5. Refinery Effluent Limit Guidelines

With respect to the Clean Water Act (CWA) and national pollutant discharge elimination system (NPDES) permitting, EPA is currently undertaking a study to determine whether to revise the petroleum refining effluent limit guidelines (ELGs) for NPDES permits. As a first step, AFPM urges EPA and the Administration to consider whether new regulations are necessary or beneficial before burdening industry with an extensive information collection request (ICR). EPA has stated that it is investigating two theories: (1) whether there has been an increase in loadings to refinery wastewater treatment plants resulting from increases in heavy Canadian crude feedstock; and (2) whether there are increase loadings to refinery wastewater treatment plants as a result of the installation of air pollution control equipment (e.g. fluid catalytic cracking unit (FCCU) scrubbers).

Over the past several decades, AFPM members have invested billions of dollars in technologies to modernize their wastewater treatment facilities to meet the Total Maximum Daily Load (TMDL) developments, NPDES permit revisions (every 5 years at a minimum), and water quality-based effluent limits (WQBEL). Therefore, AFPM requests that EPA further study existing data (eliminating the overly conservative estimations commonly found in the Toxics Release Inventory) and identify the gaps that are not covered by TMDL and WQBEL before embarking on another data collection effort through the ICR that EPA is preparing to issue. This would better utilize scarce agency resources as well as reduce unnecessary burdens on industry. Further, AFPM believes that reviewing available data, as recommended above, will support a conclusion that further rulemaking is unnecessary.

Recommendation

AFPM does not support EPA pursuing a refinery ELG rulemaking based on unclear drivers and objectives from EPA. AFPM recommends that EPA positively state that there is no need to revise the refinery ELG.

Other key regulations of concern to AFPM members:

6. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Financial Assurance

CERCLA 108(b) addresses the promulgation of regulations that require certain classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register on January 6, 2010, and a Notice of Intent to proceed with Rulemaking in the Federal Register on January 11, 2017.

The ANPRM identified additional classes of facilities within three industry sectors that may warrant the development of financial responsibility requirements under section 108(b)—the Chemical Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry

(NAICS 2211). A court order¹² established a schedule for EPA's regulatory response, with the hard rock mining industry chosen as the first industry sector with other industries to follow.

Factors EPA may consider in the decision on whether to propose requirements for an industry sector include: 1) the amounts of hazardous substances released to the environment; (2) the toxicity of these substances; 3) the existence and proximity of potential receptors; 4) contamination historically found from facilities; 5) whether the causes of this contamination still exist; 6) experiences from Federal cleanup programs; 7) projected costs of Federal clean-up programs; and 8) corporate structures and bankruptcy potential. EPA's action will consider whether section 108(b) financial assurance will effectively reduce these risks. The proposed rule for the hardrock mining industry (82 Fed. Reg. 3,388) is contrary to the new administration's priority to focus on promoting U.S. businesses, industries, and job creation, and may add a potentially unnecessary additional financial burden on this industry group. Additionally, many of these facilities are already required to maintain financial assurance under State programs, raising the question of why additional Federal requirements are necessary.

Since many of the affected facilities are likely to be already required to have Resource Conservation and Recovery Act (RCRA) financial assurance, this requirement should be deemed unnecessary. It is not clear what additional benefit this regulation will provide or what additional activities it will cover.

Recommendation

AFPM does not support a rulemaking process for additional financial assurance at this time as the benefits have not been adequately demonstrated.

7. Elimination of "Once in Always in" policy for MACT rules

On January 3, 2007, EPA proposed amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors.¹³ This policy clarified when a major source of hazardous air pollutants can become an area source – by obtaining federally enforceable limits on its potential to emit – rather than comply with major source requirements. The proposed amendments would allow a major source to become an area source at any time by limiting its potential to emit HAPs to below the major source thresholds of 10 tpy of any single HAP or 25 tpy of any combination of HAPs. EPA also proposed revising tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions proposed through this notice.

After receiving comments, no further action was taken on this proposed rule.

¹² Idaho Conservation League, et al., No. 14-1149 (D.C. Cir. 2016).

¹³ "Potential to Emit for MACT Standards – Guidance on Timing Issues," May 16, 1995, <https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf>.

Recommendation

AFPM recommends that EPA finalize this rule, as proposed to minimize the long-term compliance burden for sources that reduce emissions below the major source threshold. Finalizing this rule would provide a powerful incentive for facilities to reduce emissions to below the major source threshold, where possible and practicable.

8. Hazardous Waste Generators Improvement Rule

EPA recently published the Hazardous Waste Generators Improvement Rule.¹⁴ The rule is helpful in some respects but imposes additional burdens in others. For instance, it causes waste generators who violate even one “Condition for Exemption” to be treated as if it was a violation of a waste treatment, storage, and disposal facilities (TSDFs) requiring a RCRA permit even though waste generators are not required to comply with as many regulations as a TSDF. Violation of a single minor condition can therefore mean that an otherwise exempt facility must obtain a RCRA permit and can be cited for violations of numerous regulations and permit conditions. This regulatory change contradicts the clear intention of Congress that RCRA permits not be required of hazardous waste generators who do not treat, store, or dispose of the waste.

Recommendation

EPA should revise the provisions equating a generator violation as a TSDF violation and the need for so many conditions constraining RCRA generators from realizing the improvements in the final rule.

9. Site Remediation MACT

EPA has proposed changes to the NESHAP for the Site Remediation source category.¹⁵ The proposal would expand the regulatory program to include air emissions associated with site remediation conducted under the authority of CERCLA and RCRA. Eliminating the exemption will subject such remediation sites to new regulatory burdens and expense, when such sites are already subject to RCRA and CERCLA air emission controls. The agency itself acknowledges that the expansion is redundant and unnecessary, stating in the proposal that “[w]e do not anticipate any [Hazardous Air Pollutant (HAP)] emission reductions from the proposed removal of the RCRA/CERCLA exemption.” 81 FR 29825. Thus, by the Agency’s own admission, this is a proposed rule that, if finalized, would impose new regulatory burdens, yet achieve no environmental benefit.

Recommendation

AFPM supports withdrawing this proposed rule in its entirety and maintaining the current RCRA/CERCLA exemption.

¹⁴ 40 CFR Part 260-265; 40 CFR Part 268; 40 CFR Part 270; 40 CFR Part 279.

¹⁵ “National Emission Standards for Hazardous Air Pollutants: Site Remediation, 81 *Fed. Reg.* 29,821 (May 13, 2016).

10. EPA's Tentative Denial of a Petition to Expand the Corrosivity Characteristic to Include Solids

In 81 *Fed. Reg.* 21,295 (April 11, 2016), EPA responded to a court-ordered deadline and agreement to evaluate expanding the definition of corrosive hazardous waste (HW) (D002 waste code) to include solids. EPA proposed to reject the Public Employees for Environmental Responsibility (PEER) petition requesting this expansion on the grounds that it fails to demonstrate that the revisions are necessary to protect human health. Other programs, such as OSHA's worker safety regulations, address the petitioner's stated concerns as well.

Recommendation

AFPM supports EPA's denial of the petition, maintaining the current definition of the HW corrosivity characteristic.

11. Hazardous Waste Import-Export Rule

The proposed revisions of the existing regulations will require hazardous waste exporters and receiving facilities recycling or disposing hazardous waste from foreign sources to maintain a single publicly accessible Website ("Export/Import Web site") to which documents can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste import and export shipments.

Recommendation

AFPM supports withdrawing this regulation as it will likely not add to protection of human health and the environment. The existing system of documentation under RCRA adequately tracks the fate of imported or exported hazardous waste.

12. Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater

EPA issued updated CWA guidance, which is used in setting water quality standards and is relevant to CWA discharge permits and other regulatory programs (e.g., RCRA ecological risk assessment).¹⁶

The updated criteria are overly conservative in the application of selenium standards to lentic and lotic water bodies and in the corresponding fish tissue standards, which are not applicable in all instances. Revised implementation guidance should clearly state that flexibility to evaluate area-specific appropriate fish species and area water body conditions is necessary and prudent. As an example, the recently issued criteria are based on warm water fish uptake; however, the regulations need flexibility to account for local sensitive aquatic species.

¹⁶ "Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater," 81 *Fed. Reg.* 45,285 (July 13, 2016).

Recommendation

AFPM supports a reevaluation of this guidance based upon more realistic assumptions, such as accounting for local sensitive aquatic species.

B. Fuels

Key Fuels Regulation facing AFPM members:

1. Renewable Fuel Standard (RFS) – 40 CFR Part 80, Subpart M

One of the biggest challenges American fuel manufacturers are experiencing today involves the regulatory conflicts and problems with the size and scope of EPA's RFS program. The RFS is an unworkable policy that disadvantages consumers, drives up costs, and fails to achieve its purported goals.

The Energy Independence and Security Act of 2007 (EISA) expanded the RFS to include a de facto mandate for 15 billion gallons of corn ethanol by 2015. EISA also established an advanced biofuels mandate that includes three subcategories: cellulosic biofuels, biomass-based diesel, and "other advanced." "Other advanced" biofuels have regulatory significance because the statutory sum of cellulosic biofuels and biomass-based diesel is less than the total advanced biofuels requirement and must be made up with ethanol derived from sugar, additional cellulosic biofuels, or additional biomass-based diesel. Under EISA, the total renewable mandate will increase to 36 billion gallons by 2022 unless EPA waives or revises the annual mandates. The Congressionally-forecasted quantities of "other advanced" biofuels are particularly problematic because the cellulosic industry failed to commercialize drop-in renewable fuels, such as cellulosic gasoline.

AFPM opposes government-mandated biofuel blending, which distorts the free market's efficient allocation of transportation fuels and disadvantages consumers. The statutory RFS provisions contain an aggressive schedule for mandating the use of a large amount of ethanol. Declining gasoline demand and increasing ethanol mandates under the RFS threaten our nation's fuel supply. Moving beyond the E10 blendwall¹⁷ is not feasible because higher ethanol blends are not suitable for widespread distribution given the incompatibility of these blends with the existing fleet of motor vehicles, small engines, marine engines, and fuel distribution infrastructure.

Recommendation

EPA should use realistic projections of the demand for gasoline/ethanol blends and E85, and for the production of cellulosic biofuel. The Agency should must use its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the overall mandate for renewable fuel does not exceed the E10 blendwall. EPA must continue to recognize the blendwall and realistic E0 demand and should not set an RFS mandate that would cause the average mandated ethanol content to exceed 9.7 percent of projected gasoline demand.

¹⁷ "E10" refers to a blend of 90 percent gasoline and 10 percent ethanol.

In addition, EPA should move the existing point of obligation to the position holder at the blending rack. This would make the RFS more equitable by leveling the playing field between refiner and large exempt blenders. AFPM petitioned EPA to move the point of obligation on August 4, 2016. EPA subsequently proposed a denial of the petition on November 22, 2016, and closed the comment period on February 22, 2017.

In addition to the RFS recommendations above, AFPM has additional suggestions for EPA fuels regulations that should be deleted/eliminated or modified, including:

Topic	Discussion	Recommendation
Winter Reformulated Gasoline (RFG) and winter conventional gasoline (CG) 40 CFR Part 80	<p>Currently, CG and RFG are segregated year-round. The RFG segregation restrictions are unnecessary because all RFG downstream of a refinery must meet RFG specifications anyway. Minor mixing of non-RFG products, as can occur in normal product distribution systems, that does not cause RFG to be off-spec with EPA compliance specifications (benzene, sulfur, and VOC-reduction) should not be prohibited.</p> <p>This will provide optimization of fuel distribution and storage through the reduction of the need to downgrade expensive RFG to lower-valued products (such as transmix or conventional gasoline).</p>	<p>Delete requirements to segregate winter RFG and winter conventional gasoline.</p> <p>Assuming EPA removes the distinction between RFG and conventional gasoline in the non-VOC season (winter), it also should:</p> <ul style="list-style-type: none"> • Remove the survey requirement for winter RFG (because there would not be winter RFG any longer) in 80.68; and • Adjust the total number of surveys and samples so that the sample size is based on a statistically supported calculation to provide the prescribed level of accuracy in the survey results. Any other current minimum sample requirements should also be removed.
The RFG survey oxygen program to verify downstream oxygenate blending 40 CFR Part 80	Since all RFG has been E10 since 2006, a retail survey is an unnecessary expense. The RFS regulations are requiring ethanol blending at or near the blendwall rendering the survey pointless and no longer necessary.	Eliminate the RFG survey oxygen program in 80.69.
Mandatory Greenhouse Gas (GHG) emissions reporting	EPA was required by the appropriations bill for FY 2008 (P. L. 110-161) to develop a program for reporting GHG emissions. Reporting	Delete requirements for mandatory GHG emissions reporting.

40 CFR Part 98	has been required for years without an associated GHG emissions control requirement.	
Fuel registrations 40 CFR Part 79	Refiners are required to submit duplicative information on multiple EPA reporting forms, resulting in redundant reporting requirements.	<ul style="list-style-type: none"> • Eliminate the Fuel Manufacturer Quarterly Report for Motor Vehicle Gasoline or Diesel Fuel as it serves no purpose or provides duplicate information (EPA Form 3520-12Q). • Eliminate the Fuel Manufacturer Annual Report for Motor Vehicle Gasoline or Diesel Fuel as it also serves no purpose or provides duplicate information (EPA Form 3520-12A).
Reid Vapor Pressure (RVP) of the complex model valid range for RFG 40 CFR Part 80	EPA has promulgated ranges for several gasoline parameters. One of these is a lower limit for RVP in the complex model at 80.45, 6.4 psi.	Change the lower RVP of the complex model valid range for RFG to 6.0 psi.
RFS program 40 CFR Part 80	Renewable volume obligations should not include transmix. Transmix is not gasoline or diesel fuel and cannot be used directly as a transportation fuel.	Allow refiners to back out transmix from their gasoline and diesel production when calculating their renewable fuel obligations (RVOs) in the RFS program.
Gasoline properties required for certification and reported to EPA in batch reports 40 CFR Part 80	<p>The only EPA compliance standards for gasoline are benzene, sulfur, and summertime volatility (RVP for conventional gasoline and RFG volatile organic compounds (VOC) reduction). Other gasoline parameters (<i>i.e.</i>, olefins, aromatics and distillation) are currently required to be reported to EPA for every batch of gasoline produced or imported. These other parameters were necessary for complex model compliance.</p> <p>However, the complex model is only used now for summer RFG VOC. The batch reports should be revised.</p>	<p>The following should be the <u>only</u> properties reported on batch reports:</p> <ul style="list-style-type: none"> • All batches – Sulfur and benzene • All summer batches – RVP • All summer RFG batches – VOC Reduction and supporting test results (oxygen, E200, E300, aromatics, and olefins) <p>In addition to removing the reporting requirements and obsolete regulatory certification sections, the regulations, primarily at</p>

		<p>§80.47, should be clarified that EPA-required tests need only be run if the property is used in determining compliance with an EPA standard or an EPA reporting requirement.</p> <p>This will reduce compliance exposure with regard to running an EPA-required test method incorrectly. For instance, we may still run distillation year-round for all gasoline batches, but running it flawlessly by the EPA-prescribed version of the D-86 test method would only carry compliance implications for summer RFG batches. Another value is <i>the complex model limits would no longer apply</i> for all conventional gasoline and for all non-VOC RFG, reducing a current refinery constraint.</p> <p>--- OR ---</p> <p>Eliminate gasoline batch reporting altogether</p> <p>The gasoline batch reports support the refiner's benzene, sulfur, and volatility compliance reporting. The annual attestation is sufficient to check that the refiner's testing records support the refiner's compliance with the standards. The batch reporting is duplicative and burdensome.</p> <p>The two options above reduce the number of parameters in</p>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		batch reports or eliminate batch reporting altogether and apply to individual batches and composites of batches.
Independent laboratory sampling and testing of RFG (or at least non-VOC RFG) 40 CFR Part 80	<p>In the early days of the RFG program, with uncertainty around how refinery labs would perform, the independent laboratory option seemed to make sense to help EPA evaluate if a particular refinery laboratory was having testing performance issues. Today, especially under the Tier 3 rule, refineries have more stringent lab performance requirements. The independent lab requirement no longer adds value and only causes extra cost and delay in producing RFG.</p> <p>This could reduce the cost of producing RFG, including the cost of independent sampling and testing, and reduce shipping delays while waiting for independent lab sampler.</p>	Eliminate independent laboratory sampling and testing of RFG (or at least non-VOC RFG).
The Substantially Similar (SubSim) Interpretive Rule 73 Fed. Reg. 22277 (April 25, 2008)	<p>The current SubSim Interpretive Rule refers to a 1988 version of ASTM D4814. Today's fuel is being manufactured to meet modern versions of D4814. Differences exist between the 1988 version and the current versions that cause sub-optimization of the fuel pool.</p> <p>This would enable greater optimization during fuel production by only having to meet a single, modern specification.</p>	Update the SubSim Interpretive Rule.
RFG reporting 40 CFR Part 80	AFPM would like to see the elimination of quarterly RFG reports, as annual reports are sufficient for EPA's statistical and enforcement needs.	Amend 40 CFR Sec. 80.75 to require annual reporting.
Volumetric Additive Reconciliations (VARs) 40 CFR Part 80	AFPM members are striving to reduce administrative tasks, and reduce compliance exposure with regard to ensuring each of the required elements are placed on a VAR record each month for each additive system. This	Eliminate required VARs.

	requirement is unnecessary to ensure compliance with the regulatory requirement that certified detergent additives be used in all gasoline.	
EPA administrative <i>preview</i> of Office of Transportation and Air Quality Registration (OTAQREG) registration changes	When a company submits a registration change, duly signed by the responsible corporate officer (RCO), such changes should be accepted as submitted, and should not be subject to an EPA review prior to making the changes effective. The delay caused by EPA's review/approval queue is unnecessary. If EPA reviews changes after they are effective and the changes are found to be in violation, the company should bear the burden of the erroneous submission. The main value of an electronic submission system should be speed. This value is negated when EPA previews everything before it is effective. AFPM requests a reduction in wait time to make registration changes.	Eliminate EPA administrative <i>preview</i> of OTAQREG registration changes.
Ultra low sulfur diesel (ULSD) 40 CFR Part 80, Subpart I	AFPM is seeking increased clarity around applicable requirements. Subpart I is riddled with expired requirements, making it very difficult for regulated parties (and the regulators) to understand the requirements.	Eliminate expired elements of 40 CFR Part 80 Subpart I (ULSD).
Detergent additive regulations 40 CFR Part 80	The "Interim" detergent additive program was implemented in 1996 (effective in 1997) at 80.161, but the requirements remain listed in the CFR. Retaining expired requirements in the regulations complicates a regulatory entity's compliance.	Eliminate §80.141 through §80.160.
Gasoline Toxics 40 CFR Part 80, Subpart J	40 CFR Part 80, Subpart J, Gasoline Toxics, was effectively replaced by Subpart L, Gasoline Benzene. Removal of this obsolete regulation will increase understanding of applicable requirements.	Eliminate 40 CFR Part 80, Subpart J, Gasoline Toxics.

Lead and phosphorous test methods 40 CFR Part 80	Section 80.3 references appendices of Part 80 as test methods to test for lead and phosphorus. These methods are antiquated and should be replaced with references to the appropriate ASTM test methods.	Eliminate §80.3 in 40 CFR (lead and phosphorous test methods).
RFS 0104 reports 40 CFR Part 80	All information for the RFS 0104 report comes straight from the EPA Moderated Transaction System (EMTS) except the volume of biofuel held at the end of the quarter and even that is not required for obligated parties. If the biofuel inventories are necessary, maybe it can be set up to enter that into EMTS, or have just a single annual report of inventories for non-obligated parties. EPA already has access to this information and should not maintain a separate reporting requirement for information it already has in its possession.	Eliminate the quarterly RFS 0104 reports.
Downstream Oxygenate Blending 40 CFR Part 80	<p>There are four separate programs that govern the inclusion of downstream oxygenates in gasoline, each with distinct testing requirements: 1) anti-dumping, 2) RFG, 3) gasoline benzene and 4) gasoline sulfur</p> <ul style="list-style-type: none"> - Conventional blendstock for oxygenate blending (CBOB) may be included if it meets requirements of 80.101(d)(4)(ii) - must demonstrate added by refiner or have contract with downstream oxygenate blending (currently only 18 percent accounted for) - RFG 80.69(a) – hand blend and in-use retail survey to ensure oxygenate was added downstream - Tier 2 gasoline sulfur allowed 0 ppm ethanol in calculations, now Tier 3 (beginning 2017) requires refiners to test for ethanol content or assume 5 ppm (this also necessitates testing neat reformulated blendstock for oxygenate blending) 	<p>Simplify and modernize the programs, ideally using one methodology for CG/RFG, which covers all programs and would maintain the level of stringency.</p> <p>Options: Test hand blends for all gasoline (instead of only for RFG), or refinery gate sampling and testing for all gasoline.</p>

	<p>(RBOB)/CBOB, in addition to hand blended sample testing required per 80.69, etc.)</p> <ul style="list-style-type: none"> - Gasoline benzene allow refiners to be included in RFG (if 80.69 is met) or 80.101(d)(4) is met <p>Many reporting options and requirements create burden, causes refiners to blend conventional gasoline (CG) that is cleaner than RFG, and test both neat and oxygenated blended samples.</p>	
Emergency response streamlining and enhancement 40 CFR Part 80	<p>The variation of procedures in response to a temporary fuel supply interruption (such as a hurricane) from state to state creates challenges from a timing and complexity standpoint. In some states, response is only available if the interruption/shortage is due to a named storm, and some states would only offer enforcement discretion. In addition, the level of approval varies from a state agency approval to needing the Governor's signature (always slower), etc. There should be a consistent, Federal process, and in return, EPA needs to let states drop any NAAQS exceedances during this time from Attainment determinations. This would remove the major concern for states in these waivers being granted by removing the potential penalty for these actions.</p>	<p>A Federal process to either self-implement or receive rapid approval for summer gasoline RVP waivers in case of temporary supply interruptions.</p>
Butane blending 40 CFR Part 80	<p>Six reports are required for butane blending and as a result, there is much redundancy.</p>	<p>Streamline and eliminate redundancies of butane blending reporting requirements.</p>
Gasoline Loading Racks 40 CFR 63 Subpart XX	<p>There needs to be an efficient means for temporary relaxation of some of the Federal rules on Gasoline Loading Racks (40 CFR 63 Subpart XX) to allow for open dome loading during periods of supply interruption. The regulation requires loading to be controlled using a vapor recovery</p>	<p>The regulations should recognize temporary situations when there is a supply disruption.</p>

	system, and that greatly slows down the loading time and truck turnaround. EPA offers enforcement discretion, which is not sufficient. Perhaps states should be authorized to grant permission, since they have a better grip on local conditions and needs than Federal policymakers.	
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

C. TSCA and LCSA Implementation

The following comments are organized by opportunities that AFPM believes EPA can take advantage of when finalizing regulations to implement the LCSA. Comments on EPA's existing chemical work plan and new chemicals program are also included. AFPM is also commenting on certain policies, procedures and guidance that are integral to TSCA but have not been included in any existing or proposed regulations. AFPM sees a unique opportunity for EPA to minimize regulatory burdens as these regulations are implemented.

I. Implementation of the LCSA

- a) AFPM supports EPA's efforts to implement the LCSA, wants the subsequent regulations to reflect the intent of Congress, and believes that EPA should meet the deadlines outlined in the statute.**

The LCSA requires EPA to promulgate a series of regulations ranging from modernizing the TSCA Inventory to outlining the processes for prioritization of substances, risk evaluation and collection of fees. AFPM fully supports the Agency's efforts to propose the rules and meet the deadlines imposed by LCSA.

While it is important to meet statutory deadlines, it is equally important to reflect the intent of Congress in any regulations required by a particular statute. AFPM believes that if the Agency is fully transparent throughout the rulemaking process, any deviation from the statutory requirements, including deadline obligations, will be understood by stakeholders.

- b) EPA has an opportunity to reduce regulatory burdens when finalizing rules that have been proposed to implement the LCSA provisions.**

EPA has proposed rules to modernize the TSCA inventory, outline the process for prioritization of substances for further work, and establish a framework for risk evaluations of high priority substances. AFPM has commented on each of those proposals, outlining concerns and offering constructive suggestions. Although some stakeholders may say that congressionally mandated regulations are outside of the scope of EO 13777, AFPM disagrees. The final rules ("TSCA Inventory Notification (Active-Inactive) Requirements" [EPA-HQ-OPPT-2016-0426]; "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act" [EPA-HQ-OPPT-2016-0636]; and, "Processes for Risk Evaluation and Chemical Prioritization Under the Amended Toxic Substances Control Act" [EPA-HQ-OPPT-2016-0400]),

which are expected in June 2017, should meet the general objectives of EO 13777, which are to reduce regulatory burdens. Below are several examples of where regulatory burdens could be reduced while finalizing proposed rules under TSCA.

c) To reduce the burdens associated with new chemical reviews, prioritization of existing substances for work, and the risk evaluation process, EPA should revise its interpretation of the LCSA safety standard’s “conditions of use.”

In general, EPA’s interpretation of “conditions of use” is overly broad and goes well beyond what Congress intended when creating the safety standard. This interpretation has already created additional and unnecessary burdens on the regulated community as well as the Agency. This effect can be seen in the new chemicals program, where EPA is considering uses beyond those identified by the manufacturer. The result has been lengthy reviews, as well as demands for complex toxicity testing (i.e., sub-chronic and chronic inhalation studies) that do not reflect potential exposures from uses identified in the premanufacture notice (PMN).

When creating LCSA, Congress did not intend a dramatic change in the safety standard, nor did it intend for EPA to significantly change the way it conducts risk evaluations for new and existing chemicals. The intent was to allow EPA to more efficiently use its TSCA regulatory tools and to make the Agency’s processes and decision-making more transparent and based on the best available science.

There are no provisions in the LCSA that require EPA to consider all conditions of use, nor was that the intent of Congress. In fact, at Section 6(b)(4)(F)(ii) the statute explicitly mentions “sentinel exposures” when requiring EPA to describe its consideration of exposures. Sentinel exposures are employed to represent broad categories of use so that the assessor does not have to go into each specific subcategory of use. Sentinel exposures represent realistic upper-bound exposures within those broad use categories. The exposures are expected to be much greater than other sources or pathways, so if the margin of exposure is at an acceptable level, there is no need to delve into each and every type of use or background source. This approach reduces the regulatory burden on industry and EPA, while ensuring an effective health and safety regulatory program.

AFPM interprets the inclusion of sentinel exposures as a clear message to the Agency that it should not include every conceivable use when determining the scope of a risk evaluation. The intent of Congress was to allow EPA flexibility in its approach to risk evaluation so that the Agency could maximize the efficient use of resources.

The move away from EPA’s standard risk assessment practices has already brought the new chemical review process to a sudden halt, impeding innovation in the US and affecting supply chains throughout the economy. The result of EPA’s misinterpretation of conditions of use has wasted time and resources by not focusing on the uses and exposures that present the greatest risk. EPA’s new approach lacks the type of focus the Agency had for years in the new chemicals program and in other previous risk assessment activities. Prior to EPA’s move away from its established risk evaluation approaches, nearly ten times the number of new and often safer chemicals were introduced into the US on an annual basis than in Europe. Currently, the backlog of new chemicals in the review process numbers in the hundreds, which is unprecedented. If this

trend continues, by the end of the year Europe will outpace the US in the number of new chemicals entering commerce, which is directly linked to American innovation.

EPA should not consider uses and exposures outside of those identified by the PMN submitter. That will alleviate the backlog of substances in the new chemical review process and return the Agency to its successful and internationally acclaimed approach to new chemical reviews. Importantly, AFPM is not suggesting that EPA disregard “known, intended, or reasonably foreseen uses” of existing chemicals; rather, the Agency should more narrowly exercise and clearly articulate its discretion in the prioritization and risk evaluation process rules to use qualitative, semi-quantitative and other approaches when evaluating hazards, exposures and risks.

d) Acceptance of robust summaries in lieu of full study reports will reduce regulatory burdens on EPA, the regulated community and other interested stakeholders.

The concept of a robust summary was developed and established as part of the High Production Volume (HPV) Challenge, which was a voluntary program that allowed sponsors to voluntarily submit hazard information to EPA on high production volume chemicals. The idea was to reduce the burdens of gathering full study reports, submitting the full reports to EPA, and Agency staff reviewing them. The format and content of robust summaries was the result of a multi-stakeholder group and designed to provide a technically qualified reviewer with enough information to make a scientific judgment on the study methods, reliability and results. Since then, the concept of a robust summary has been adopted globally through individual environmental authorities, as well as the Organization for Economic Cooperation and Development (OECD) and United Nations environment programs.

Full study reports from laboratory toxicity studies are voluminous and have significant monetary value, often into the hundreds of thousands and even millions of dollars. Great care must be taken to protect that private property and its contents, which creates a burden on both industry and EPA. In addition, reviewing the volumes of underlying data found in a study report should only be reserved for cases of scientific ambiguity, questionable scientific integrity or where there is significant disagreement with the interpretation of results.

EPA adoption of robust summaries will bring about greater consistency in regulatory approaches with countries that have strong trade relationships with the US. Robust summaries will significantly reduce potential burdens on EPA and the regulated community. AFPM believes that there are no issues with adopting the use of robust summaries for actions under TSCA Sections 4, 5, 6, and 8.

e) EPA can reduce the burdens associated with risk evaluations by allowing manufacturers to voluntarily submit risk evaluations conducted by EPA contractors and other approved technical organizations.

Part of the risk evaluation process outlined in TSCA Section 6, as modified by LCSA, is a process by which manufacturers can voluntarily request a risk evaluation on a chemical. The statute directs EPA regarding the number of chemicals that can go through this process at any one time, but gives EPA discretion as to how the process is implemented. AFPM urges EPA to consider expediting the approval or disapproval of dossiers that have already undergone a risk evaluation by an EPA-approved contractor or other technically qualified convener of risk experts. This would create a

pathway for a series of risk evaluations that is parallel and concurrent to the risk evaluations conducted by EPA.

AFPM member companies have a tremendous amount of experience in a variety of different programs that regulate chemicals in commerce. Petrochemicals, refining streams and derivative products tend to be well-studied and have been reviewed through a variety of programs. The dossiers prepared for other programs, such as REACH in Europe, can be easily modified for an evaluation under TSCA. While EPA is busy conducting evaluations on chemicals it selects as high priorities, industry should be afforded the opportunity to hire an EPA contractor or other technically qualified consultancy to convene a panel of experts and conduct a risk evaluation that could be submitted for expedited evaluation by the Agency.

A simple and straightforward process would include the following:

1. Company or consortium retains an EPA contractor or other technically qualified consultancy to conduct a risk evaluation on a chemical, which follows the procedures outlined by EPA;
2. EPA contractor convenes a panel of technical experts to review the dossier of hazard and exposure information;
3. Expert panel reaches a conclusion based on the TSCA safety standard;
4. EPA contractor packages the dossier, list of panelists (including qualifications), review procedures and outcome for submission to EPA;
5. Company or consortium submits package to EPA for expedited review; and
6. EPA makes decision whether chemical meets safety standard.

f) EPA can reduce the burdens associated with modernization of the TSCA Inventory.

AFPM generally supports the approach proposed by EPA to create a list of substances currently in commerce, which will become the Active portion of the TSCA Inventory. AFPM has identified opportunities where EPA can reduce the reporting burden when creating the Active list.

The intent of Congress when crafting TSCA Section 8(b) was to create and continually update an Inventory of substances actually in commerce. It is widely agreed by Congress and stakeholders that the TSCA Inventory no longer reflects an accurate depiction of chemicals in commerce; therefore, Congress added provisions in the LCSA to modernize (reset) the TSCA Inventory. Those provisions are quite clear that the sole purpose of the Inventory reset is to create an Active Inventory that lists chemicals in commerce, and create an Inactive Inventory that lists chemicals that may have been in commerce at some point in the past. Only the chemical names are necessary to create the Active and Inactive lists. Any other information contradicts the objectives set out in Section 8(a)(5)(A) to avoid unnecessary reporting, reduce the costs of compliance and to limit reporting to the entities most likely to have that information.

g) EPA should only require submission of the substance that was manufactured and not require date ranges when reporting substances to the Active portion of the Inventory.

In Unit I.C. of its Federal Register notice, “TSCA Inventory Notification (Active-Inactive) Requirements” at 82 FR 4255 (January 13, 2017), EPA first mentions a requirement for reporting the “date range when manufacture occurred,” because the Agency could “obtain confirmation that the chemical substance in question had indeed been manufactured or processed” during the 10-

year time period. EPA reiterates the proposed inclusion of date ranges in Unit III.C. and adds that the information is necessary to limit erroneous reporting outside of the look-back period, ensure the accuracy of the notices, and increase the reliability of commercial activity designations. AFPM does not agree that the reporting of date ranges will achieve any of these objectives.

Date ranges for manufacturing activities are typically not retained for 10 years, so it is very unlikely that companies will have that information. Because companies are unlikely to have date ranges going back 10 years, that information will do nothing to limit reporting of manufacture beyond the 10-year period – i.e., the erroneous reporting.

Date ranges will not ensure the accuracy of information contained in Form A. Companies will already be required to sign a statement verifying the accuracy of reported information. AFPM does not see how adding a date range assures Inventory accuracy.

Date ranges have no impact on the reliability of commercial activity designations. Again, companies will already be signing a statement that assures the accuracy of the submitted information, so adding date ranges does not verify whether a substance was produced or imported. In fact, knowing whether a substance was produced or imported has no purpose in creating an Active Inventory. Only the identification of the substance is necessary for the Inventory reset.

In summary, AFPM sees no purpose for requiring date ranges in Form A submissions. That information will be difficult, if not impossible to ascertain, which presents an unnecessary burden on reporters and runs counter to the objectives set forth in Section 8(a)(5)(A). Eliminating date ranges will reduce the cost of compliance and avoid unnecessary reporting, both of which are objectives outlined in Section 8(a)(5)(A). It will also avoid a situation where EPA is requiring reporting from a party not likely to have that information, which is another objective outlined in that subparagraph.

h) EPA should not require the type of commercial activity when reporting a substance to the Active portion of the Inventory.

Knowing whether a substance was produced domestically or imported is not necessary to determine whether the substance was in commerce during the past 10 years. The purpose of the Inventory reset is solely to create a list of chemicals that are active in commerce. It doesn't matter if the chemicals were produced or imported, since both fall under the definition of "manufacture." AFPM urges EPA to delete the requirement to report the type of commercial activity, which will further the Agency's goals of reducing "unnecessary" reporting and reducing the cost of compliance, both outlined explicitly in Section 8(a)(5)(A).

i) EPA should ensure that a company no longer intending to sell a chemical into commerce is not responsible for reporting to the Inventory reset, even if that company manufactured the substance within the past 10 years.

There are many reasons that businesses cancel or divest products or product lines. In cases where businesses or product lines are sold or merged, the new entity that intends to sell those substances into commerce should be responsible for and be afforded the opportunity to report for the purpose of being placed on the Active portion of the Inventory. The company that sold the business or product line should not be responsible for reporting because there is no longer intent to distribute

that substance for commercial purposes and there is a high likelihood that the pertinent records were transferred as part of the business transaction. One of the objectives of TSCA Section 8(a)(5)(A) is to limit reporting to the entity most likely to have the information. In this case, the seller would not likely have that information.

Another example is a company experiencing a temporary domestic supply disruption sometime in the past, which could have been the result of a supply shortage in the US, and then being forced to obtain a substance from a non-domestic source for a limited time. The company had and still has no intent to import in the future, as this was a temporary situation. The company should not be required to report that substance to the Active Inventory if there was and still is no intent to distribute the substance in commerce in the future.

j) Polymers on the current TSCA Inventory should also appear on the Interim Active Inventory.

Polymers on the TSCA Inventory but not subject to Chemical Data Reporting (CDR) rule requirements are excluded from EPA's proposed Interim Active Inventory, including polymers with a "Y" designation. Many polymers were placed on the TSCA Inventory before EPA promulgated the polymer exemption under Section 5. These low risk polymers would likely meet the standard for the polymer exemption today. The purpose of the polymer exemption was to alleviate the need for EPA to expend resources reviewing these low-risk substances under the new chemicals program. These polymers should appear on the Interim Active Inventory to help avoid unnecessary reporting and reduce the cost of compliance, which are objectives found in Section 8(a)(5)(A).

k) AFPM commends EPA for eliminating the requirements for substantiation of CBI claims when reporting to the Active Inventory, especially for substances reported during the 2016 CDR reporting cycle, because those claims were recently substantiated.

In Unit III.E. of its Federal Register notice, "TSCA Inventory Notification (Active-Inactive) Requirements" at 82 FR 4255 (January 13, 2017), Summary of the Proposed Rule, EPA does not include mandatory substantiation requirements for CBI claims for chemical identity made on Form A. Under a separate rule, to be promulgated at a future date, EPA will propose the substantiation requirements for those claims. AFPM generally supports the decision to postpone substantiation requirements for CBI claims older than five years and include them in the Review Plan, but believes substantiation for substances reported during the latest CDR cycle is unnecessary. AFPM also supports EPA's acceptance of early, voluntary substantiations with Form A submissions.

Section 8(b)(4)(B)(iii) compels EPA to require substantiation of CBI claims for chemical identities; however, Section 8(b)(4)(D)(i) excludes companies that have "substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator." The statute does not specify a particular type of submission for the substantiation, so AFPM interprets these provisions to apply to any CBI substantiation, including submissions under CDR.

AFPM agrees with the Agency decision to reduce the reporting burden by minimizing the information requirements, especially for CBI recently claimed and substantiated during the most

recent CDR reporting cycle. Minimizing the information requirements would also help the Agency meet its obligations under Section 8(a)(5)(A) by not requiring reporting that is “unnecessary or duplicative” and minimizing “the cost of compliance.”

AFPM supports EPA’s decision to honor the existing CBI claims of manufacturers and processors, even if they were not the original CBI claimants. Through this decision, EPA acknowledges that businesses are acquired, merged and even leave the marketplace. The maintenance of an existing CBI claim can provide companies with an innovation-based competitive advantage that would not otherwise be afforded.

I) EPA should regularly update the Active list to avoid multiple reporting of any one substance.

To further achieve the objectives set forth in Section 8(a)(5)(A) of “TSCA Inventory Notification (Active-Inactive) Requirements,” EPA should update the Interim Active Inventory on a frequent and regular basis. This would alert others that manufacture those same substances and avoid redundant reporting, thereby reducing unnecessary reporting and the overall cost of compliance. The purpose of the Active Inventory is to create a list of chemicals currently in commerce, not a list of manufacturers that produce or import those chemicals.

II. Existing Regulations Prior to LCSA

a) EPA can reduce the burdens of substantiating CBI claims.

Congress has provided EPA with a great deal of discretion when it comes to substantiating claims of CBI. EPA requires up-front substantiation and periodic re-substantiation for all CBI claims, which has become quite burdensome over the years. AFPM views CBI as intellectual property and believes that companies should be afforded more deference when asserting a CBI claim.

40 CFR 711.30 outlines the questions companies are required to answer when asserting a CBI claim. The questions are numerous and burdensome, which provides a disincentive to companies wishing to keep their sensitive business information confidential, especially from foreign competitors that do not respect the concept of intellectual property. EPA could significantly reduce the regulatory burden by limiting the number of questions that need to be answered to substantiate a CBI claim.

b) EPA should reduce the reporting requirements of substances that are non-toxic or do not present a potential for exposure under the intended use, and use its Section 8 Preliminary Assessment and Information Rule (PAIR) authority to collect information for chemicals it intends to prioritize.

Currently, data on production, use and exposure must be reported for substances on the TSCA Inventory that are produced or imported above 25,000 pounds per year, regardless of whether those chemicals pose a risk to human health or the environment. This includes materials that are non-

toxic or for which there is no potential for exposure under their intended uses. During the last available reporting cycle, EPA collected information on 7,690 chemicals from 4,785 sites.

AFPM supports the Agency's efforts to collect information under CDR. Casting such a broad net, however, is not necessary. Most of the information collected under CDR will not be used for prioritization or risk evaluation; rather, it will just be put on a web site. Additionally, the quality of the exposure information collected under CDR is questionable, since manufacturers are unlikely to possess downstream use and exposure information.

EPA could reduce the reporting burdens under CDR by exempting or partially exempting non-toxic chemicals and those that do not present a potential for exposure under the intended uses, such as intermediates. Limiting collected information to quantities manufactured and known uses can still provide EPA with enough information to make a rough estimate of risk.

EPA has computer models and other tools that can predict ranges of toxicity and potential exposures, just by knowing the molecular structure of the chemical and its general uses. If EPA requires more precise or detailed information, it should use its authority under TSCA Section 8(a) and issue a PAIR rule that includes processors (i.e., those most likely to have downstream use and exposure information). PAIR rules are more targeted than general information collections (i.e., CDR reporting) and can include specific entities without burdening the rest of industry.

c) Chemicals that are manufactured in the U.S. for export and returned to the U.S. should not be counted as imports or subject to CDR reporting.

There are a number of reasons why a chemical could be manufactured, exported, then returned to the U.S. The only information relevant to EPA should be the original manufacture of the substance. To count returns as imports results in double-counting and distorts the actual market picture, in addition to placing an unnecessary burden on reporters.

d) Substances that are byproducts from recycling processes should be exempt or partially exempt from reporting under the CDR rule.

TSCA Section 8(b) requires EPA to create and maintain a list of chemicals in commerce, commonly known as the TSCA Inventory. For many years companies were required to report the chemicals and amounts they were manufacturing and importing under the Inventory Update Rule (IUR). In 2006, EPA changed the nature of IUR reporting, significantly increasing the burden by including information related to use and exposure. EPA stopped using the term "Inventory Update Rule" in 2011 and established the term "Chemical Data Reporting."

Included in CDR reporting are byproducts from recycling processes. AFPM believes that the burden associated with reporting byproducts under CDR is a strong disincentive for recycling. Furthermore, it results in a distortion of the marketplace because the recycling does not change the overall volume of the manufacture for that substance. Those same molecules are counted over and over, each time the material is recycled. To make matters worse, the companies required to report byproducts of recycling will be considered manufacturers and could be subject to even more costly burdens, such as toxicity testing and risk evaluations. EPA should exempt byproducts of recycling processes from CDR reporting.

- e) **EPA should allow for a non-punitive correction to the TSCA Inventory for Chemical Substances of Unknown or Variable Composition, Complex Reaction Products, and Biological Materials (UVCBs) to reduce the potential burden associated with the new chemical review process.**

UVCB substances, also known as Class 2 substances, cannot be represented by a distinct molecular structure. They may be isomeric mixtures, complex and naturally occurring mixtures of related molecules, and other materials for which separation and purification of components is technically or economically unfeasible. Many products derived from oil, such as petroleum streams, waxes, base oils, etc., are UVCBs.

In the past several years, EPA's enforcement office has threatened action against AFPM member companies because EPA staff insisted that certain UVCB nomenclature was outdated. This marked a distinct change in nomenclature policy, but the regulated community was never afforded the opportunity to comment on the change, nor was it given any chance to comply.

EPA stated that the manufacturers of those substances were out of compliance with TSCA and demanded that certain UVCBs be renamed and treated as new chemicals subject to the burdensome new chemical review process, even though the products and processes used by manufacturers had not changed in decades, even before there was an EPA. AFPM members and petroleum-related products are not the only ones facing this sudden burden.

In addition to fines of up to \$25,000 per day, the burden of reporting the substance as a new chemical would entail a sudden stoppage in manufacturing or import, disrupting supply chains that depend on the chemical. Each UVCB would have to be broken up into sub-species and a premanufacture notice would be required for each separate substance, potentially numbering in the hundreds. The potential burden under this scenario could cripple a small or medium-sized company. EPA could easily reduce the burden of UVCB nomenclature issues by instituting a non-punitive TSCA Inventory correction and allow companies to work in cooperation with the Agency to resolve long-standing nomenclature issues.

D. Conclusion

AFPM encourages the Administration to work with Congress to bring long overdue reforms to the regulatory process. Reforms to increase transparency, enhance the quality of data used in rulemaking, and increase the accountability of the Administration and Congress to the American people are important goals that will promote economic opportunities while protecting health, safety, and the environment. Significant reductions in air, water, and waste pollution have occurred over the past several decades. Further reductions generally come at an increasing cost and are smaller than prior reductions. This rising cost to benefit ratio should be strongly considered in any future statutory or regulatory changes.

AFPM looks forward to continuing our work with you and other federal agencies to create a regulatory environment that protects public health and welfare without destroying jobs, jeopardizing our nation's energy security, or eroding our domestic manufacturing capabilities. If

you have any questions about our comments or need any additional information, please contact me at (202) 552-8461 or dfriedman@afpm.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Friedman". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Friedman".

David Friedman
Vice President, Regulatory Affairs

**Testimony of Scott Faber
Senior Vice President
Environmental Working Group**

Before the

**Subcommittee on Superfund, Waste Management, and Regulatory Oversight
of the Senate Committee on Environment and Public Works**

on

S. 543, the EPA Science Advisory Board Reform Act of 2015

May 20, 2015

Thank you for the opportunity to testify. My name is Scott Faber and I am Senior Vice President of Government Affairs for EWG, a national environmental health organization.

EWG strongly opposes legislation designed to cripple the Environmental Protection Agency's ability to carry out its essential functions, including S. 543, the EPA Science Advisory Board Reform Act of 2015.

By providing independent advice to the EPA Administrator, the Science Advisory Board has played a unique role in environmental protection for more than three decades. The SAB is primarily focused on *technical* issues, not policy issues, and does not make risk management or regulatory decisions. Its role is limited to offering advice on the scientific and technical basis on which the agency makes its risk management and regulatory decisions. The Board makes recommendations that are grounded in science, not politics.

Unfortunately, S. 543 would inject politics and needless delay into the Board's scientific and technical deliberations.

First, S. 543 would place the affiliation of potential Board members ahead of their scientific qualifications by establishing a quota for representatives of state, local and tribal governments.

SAB members are called upon to provide their technical and professional expertise, not to represent the views of any particular agency or organization. By creating such a quota system, S. 543 would undermine the integrity of the SAB and the original intent of Congress to enlist the advice of scientists “qualified by education, training and experience to evaluate scientific and technical information.”¹

Second, S. 543 would allow the appointment of Board members who have potential financial conflicts of interest, so long as those interests are disclosed. Under current law, EPA carefully evaluates the potential conflicts of interest of all Board members in accordance with federal law, which permits waivers in some cases, and with the ethics requirements of the Federal Advisory Committee Act (FACA). Like the quota system described in Sec. 2(b)(2)(B) of S. 543, a provision permitting Board members with financial conflicts would undermine the integrity, and potentially the impartiality, of SAB reviews.

Third, S. 543 would discourage qualified experts from agreeing to serve on the Board. In particular, Sec. 2(b)(3)(D) would have a chilling effect on participation by requiring public disclosure of SAB members’ private financial information. In addition, Sec. 2(b)(7) would needlessly limit the number of terms a Board member could serve, frustrating the SAB’s access to individuals with specialized expertise.

Fourth, S. 543 would create significant new and unnecessary burdens on the Board that are ultimately designed to delay EPA action. In particular, S. 543 would require the SAB to provide written responses to all public comments – which in some cases number more than 100,000. In addition, S. 543 would extend the public comment period beyond a Board meeting – even though FACA prevents the board from considering such comments without holding yet another public meeting. This would create an endless cycle of meetings and comments that would ultimately impede and delay the Board’s ability to provide the Administrator with its scientific and technical advice.

¹ 42 U.S.C. 4365

Advocates for S. 543 claim these reforms would increase transparency, empower scientists, avoid conflicts of interest and enhance the Board's scientific integrity.² However, the Federal Advisory Committee Act already provides important safeguards that prevent conflicts of interest and ensure public access and input to the SAB's deliberations. What's more, the Board already has launched initiatives to solicit even greater public participation.³ More generally, the Office of Science and Technology Policy⁴ has taken steps to ensure the scientific integrity of agency actions and the EPA has adopted its own Scientific Integrity Policy,⁵ consistent with the Information Quality Guidelines of the Office of Management and Budget.⁶

In summary, these provisions of S. 543 would undermine the SAB's scientific integrity by making Board membership subject to organizational affiliation rather than merit; by increasing, not reducing, financial conflicts of interest; and by creating a needless cycle of meetings and comments that will only serve to delay action.

As the Union of Concerned Scientists has noted, S. 543 and S. 544, the so-called "Secret Science Reform Act of 2015," are elements of a broader strategy to delay and ultimately deny to EPA the ability to improve air and water quality for all Americans.

In particular, S. 544 would sharply limit the science EPA can rely on by prohibiting the use of studies based on private health data, proprietary models and confidential business information. S. 544 would also prohibit the use of long-term studies, workplace exposure studies, oil and chemical spill studies, and other research that is difficult or impractical to "reproduce" but that provides critical information about health effects. What's more, S. 544 creates an outrageous

²<http://www.boozman.senate.gov/public/index.cfm/press-releases?ID=2d5d3849-5c88-4cac-a0e5-5a6afb4e5a05>

³<http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/PublicInvolvement?OpenDocument>

⁴<https://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09>

⁵http://www2.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf

⁶https://www.whitehouse.gov/sites/default/files/omb/inforeg/iqg_oct2002.pdf

double standard by restricting the use of such studies in actions designed to protect public health but permitting them in actions that benefit industry, such as permit approvals and chemical registrations.

Taken together, these bills would needlessly rob EPA of the ability to rely upon basic science and needlessly limit the agency's ability to subject scientific and technical questions to review by the Science Advisory Board. We urge you to oppose S. 543 and S. 544.

Thank you for the opportunity to testify.

**Subcommittee on Superfund, Waste Management, and Regulatory
Oversight Hearing:**

**“Oversight of Scientific Advisory Panels and Processes at the
Environmental Protection Agency and Legislative Hearing on S. 543
the Science Advisory Board Reform Act of 2015”**

Wednesday, May 20, 2015, at 9:30 a.m.

Thank you Subcommittee Chairman Rounds for convening today’s oversight and legislative hearing, and thank you to our witnesses for being here to testify. Today’s hearing covers a very important issue that hinges nearly every decision made by the Environmental Protection Agency (EPA): science.

When it comes to very technical and complex matters before the EPA, Congress specially crafted laws to ensure that EPA decisions are based on sound science and advice from independent experts. Two key panels advising the EPA on such matters we will review today include the Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC).

Ideally, these panels should be composed of well-qualified and balanced experts, operate in an open and transparent process, and provide a robust and independent review to inform EPA action. However, current SAB and CASAC panels deviate far from this framework. We will hear testimony today that these panels exclude

professionals with real-world expertise, lack geographic diversity, limit public participation, and fail to hold the EPA accountable.

A prominent theme that will emerge from the testimony today is that the SAB is not fully independent from the EPA. The SAB has not fulfilled its obligation to respond to Congress because of EPA interference. EPA limits the ability for the SAB to review critical science and regulatory actions. The SAB is discouraged from expressing dissenting views and communicating uncertainties in reviews. EPA selects members of the SAB and CASAC who are seemingly an extension of the Agency due to the number of EPA grants received, work cited under review, or tenure on such panels.

Testimony will also highlight the need for Senators Boozman and Manchin's S. 543, the Science Advisory Board Reform Act of 2015, to address these issues. I am a proud cosponsor of S. 543. The bill would bring the much needed transparency, public participation, accountability, and independence to the advisory process which will ultimately lead to better science and better EPA decision-making.

I ask that my full statement be entered into the record. Thank you.

STATEMENT OF

Roger O. McClellan
Advisor, Toxicology and Human Health Risk Analysis
Albuquerque, New Mexico

Before the

Subcommittee on Superfund, Waste Management and Regulatory Oversight
Committee on Environmental and Public Works
U.S. Senate

Hearing Purpose:

- a) Oversight related to the panels and processes by which the Environmental Protection Agency receives independent advice**
- b) Review of S.543, the Science Advisory Board Reform Act of 2015**

May 20, 2015